

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
MAR 31 1993

MITCHEL S. ZABIENSKI and
PATTI ZABIENSKI,

Plaintiffs,

vs.

THE WHITLOCK CORPORATION, a
foreign corporation, d/b/a
WHITLOCK AUTO SUPPLY,

Defendant.

No. 91-C-720-C

FILED

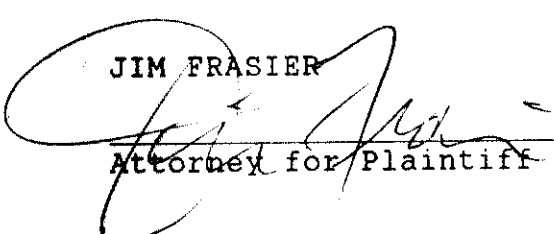
MAR 29 1993

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

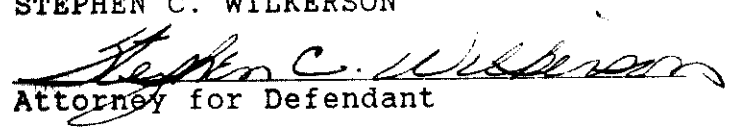
STIPULATION OF DISMISSAL

COME NOW the Plaintiffs, Mitchel S. Zabienski and Patti Zabienski, and the Defendant, The Whitlock Corporation d/b/a Whitlock Auto Supply, by and through their respective attorneys, and in accordance with Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedures, hereby stipulate to the dismissal with prejudice of all claims and causes of action involved herein with prejudice for the reason that all matters, causes of action and issues in the case have been settled, compromised and released herein.

JIM FRASIER


Attorney for Plaintiff

STEPHEN C. WILKERSON


Attorney for Defendant

ENTERED ON DOCKET
MAR 31 1993

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
NORTHERN DISTRICT OF OKLAHOMA

KEITH SCOTT,

Plaintiff,

vs.

CITY OF GLENPOOL, et al.,

Defendants.

FILED

MAR 30 1993

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

Case No. 91-C-221E

DISMISSAL WITHOUT PREJUDICE

COMES now the Plaintiff, KEITH SCOTT, and dismisses the above styled and captioned litigation without prejudice.

Plaintiff states to this Court that the Defendants have no objection to this Dismissal without Prejudice and further, that the Defendants, join in the approval of this Dismissal Without Prejudice.

WHEREFORE, premises above considered, the Plaintiff, KEITH SCOTT, dismisses the above styled and captioned litigation without prejudice.


JOHN M. BUTLER, OBA#1377

Attorney for Plaintiff

P.O. Box 700

Okmulgee, OK 74447

(918) 756-6767


KEITH SCOTT, Plaintiff


PHIL FRAZIER, OBA# 3112

FRAZIER, SMITH & PHILLIPS

Attorneys for Defendants

1424 Terrace Drive

Tulsa, OK 74104-4626

(918) 744-7200

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 31 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

PHILLIP A WRIGHT,
Personal Representative of
the Estate of Helen Wright,

Plaintiff,

vs.

Case No. 91 C 442 B

SPALDING & EVENFLO COMPANIES,
INC., d/b/a EVENFLO JUVENILE
FURNITURE COMPANY, a/k/a
QUESTOR JUVENILE FURNITURE
COMPANY,

Defendant.

JUDGMENT ON VERDICT

The above captioned matter came on before this Court for jury trial March 1, 1993. Present were Plaintiff Phillip A. Wright and his attorneys Loyal J. Roach and Joe Fears, Defendant Spalding & Evenflo Companies, Inc., and its attorney Richard Eldridge. The jury heard the evidence, the charges of the Court and the arguments of counsel and returned its verdict in favor of Plaintiff Phillip A. Wright on March 11, 1993, for the amount of \$1,000,000.00

After giving credit to Defendant Spalding & Evenflo Companies, Inc., for the sum of \$129,500.00 for a setoff pursuant to this Court's Order of March 25, 1993, a balance of \$870,500.00 remains owing on the jury verdict for the calculation and application of pre-judgment interest pursuant to 12 O.S. § 727. Under said statutory provision the Court finds that this action was filed June 24, 1991. Using the applicable rates for the below stated periods involved, pre-judgment interest should be applied to the \$870,500.00 balance as follows:

1. Six months and six days for 1991 at the rate of 11.71% per annum for a total of \$52,670.47 in pre-judgment interest for 1991;

2. One full year for 1992 at the rate of 9.58 % per annum for a total of \$83,393.90 in pre-judgment interest for 1992; and

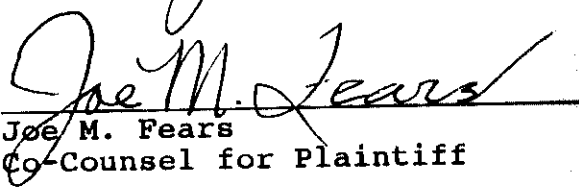
3. Two months and twenty-nine days for 1993 at the rate of 7.42% per annum for a total of \$15,959.28 in pre-judgment interest for 1993.

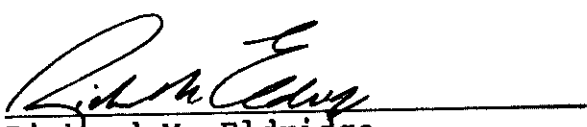
GIVING APPROPRIATE CREDITS FOR THE ABOVE, IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that Plaintiff Phillip A. Wright has and recovers judgment of and from Defendant Spalding & Evenflo Companies, Inc., for the sum of \$1,022,523.65 together with the costs of this action if timely applied for pursuant to Local Rule 6 together with interest thereon at the post-judgment rate of 3.21% per annum.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:


Loyal J. Roach
Attorney for Plaintiff


Joe M. Fears
Co-Counsel for Plaintiff


Richard M. Eldridge
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JANICE HINES,

Plaintiff,

vs.

CITY OF BRISTOW, OKLAHOMA; a
political subdivision of the
State of Oklahoma; PERRY LOW,
individually and in his official
capacity as Chief of Police;
JOHN IRVINE, individually and in
his official capacity as Mayor
of Bristow, Oklahoma,

Defendants.

Case No. 92-C-306-B


FILED

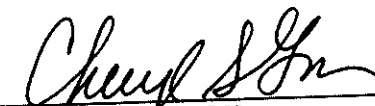
MAR 29 1993

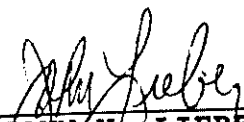
Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

STIPULATION OF DISMISSAL WITH PREJUDICE

The parties stipulate that this case is dismissed with
prejudice against the Defendants, City of Bristow, Perry Low and
John Irvine.


JANICE HINES


CHERYL S. GAN
Attorney for Plaintiff
404 E. Dewey St., Ste. 106
P.O. Box 1326
Tulsa, OK 74067


JOHN H. LIEBER
ELLER AND DETRICH
Attorneys for Defendants
2727 East 21st Street
Suite 200, Midway Building
Tulsa, Oklahoma 74114

25

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MAR 30 1993

SHIRLEY J. PALMER,

Plaintiff,

vs.

ROLLIE WILLIAMS, an individual,
and THE BOARD OF REGENTS FOR
OKLAHOMA AGRICULTURAL AND
MECHANICAL COLLEGES, ex rel
NORTHEASTERN OKLAHOMA AGRICULTURAL
AND MECHANICAL COLLEGE,

Defendants.

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Case No. 92-C-533 E

ENTERED ON DOCKET
DATE MAR 30 1993

ORDER

NOW on this 30th day of March, 1993, this matter comes
on for hearing pursuant to the Joint Stipulation of Dismissal and
Application for Dismissal With Prejudice of the parties hereto.
The Court, being fully advised in these premises, finds that the
Application should be granted.

IT IS THEREFORE ORDERED that this cause is dismissed with
prejudice.


UNITED STATES DISTRICT JUDGE

26

175

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 30 1993

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

DEAN E. WILLIAMS,
Plaintiff,

vs.

No. 91-C-789-E

MAHENDRA R. PATEL, d/b/a
STRATFORD HOUSE INN,
Defendant.

ENTERED ON DOCKET

DATE MAR 30 1993

AMENDED ORDER OF DISMISSAL WITH PREJUDICE

Pursuant to application filed herein, the parties have stipulated that all questions and issues existing between the said parties have been fully and completely disposed of by settlement and have requested the entrance of an order of dismissal with prejudice as to all Defendants. IT IS ORDERED that the case should be and the same is hereby dismissed with prejudice as to all Defendants and the matter fully, finally and completely disposed of.

DATED this 29th day of March, 1993.


JUDGE OF THE DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

PUBLIC SERVICE COMPANY OF
OKLAHOMA and OKLAHOMA GAS AND
ELECTRIC CO.,

Plaintiffs,

vs.

VERNON E. FAULCONER, INC.,

Defendant.

No. 92-C-1156-E

MAR 20 1993
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE MAR 30 1993

ORDER OF DISMISSAL

The Court has for consideration Defendant's Motion to Dismiss (docket #2). Plaintiffs and Defendant are parties to a Gas Purchase Contract, the term of which is twenty years or until the wells drilled pursuant to the leases covered by the contract are no longer capable of producing commercial quantities of gas. It is a dispute over the term which forms the substantive issue in the case: Plaintiffs ceased performance; whereupon Defendant sued in Blaine County Court on August 21, 1992 alleging that the wells continue to be capable of producing commercial quantities of gas and asserting a breach of contract action. Plaintiffs then moved to dismiss that state court action on the grounds that venue was improper. The trial court granted the motion. That ruling is currently on appeal; this federal declaratory judgment action was filed in December, 1992.

The court has reviewed this action in light of the applicable law and finds that Defendant's motion should be granted. It is beyond dispute that the issue of whether to entertain a suit for

15

declaratory judgment rests within the sound discretion of the Court. 28 U.S.C. §2201. See, e.g., Heritage Land Co. v. Federal Deposit Ins. Co., 572 F.Supp. 1265 (1983). The Declaratory Judgment Act should not be used "simply to remove a controversy from a forum where it properly belongs." Topp-Cola Co. v. Coca-Cola Co., 314 F.2d 124, 126 (2nd Cir. 1963). "A declaratory judgment may be refused by federal district courts where it would serve no useful purpose or ... where it is being sought merely to determine issues which are involved in a case already pending and can be properly disposed of therein ..." (citations omitted). Yellow Cab Co. v. City of Chicago, 186 F.2d 946, 950 (7th Cir. 1951). Thus, where - as here - the parties and issues were before the state court prior to the filing of this declaratory judgment action, and there is a danger that concurrent cases could result in piecemeal litigation, the Court is inclined to exercise its discretion in favor of Defendant's Motion to Dismiss.

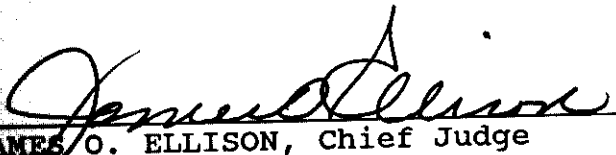
The Court, however, is cognizant of its general obligation to exercise the jurisdiction granted to it absent "exceptional circumstances". Colorado River Water Conser. Dist. v. U.S., 424 U.S. 800, 817, 96 S.Ct. 1236, 1246, 47 L.Ed.2d 483 (1976) (citations omitted). The Court finds it unnecessary to decide whether, in the context of the application of the Colorado River test to declaratory judgment actions, Brillhart v. Excess Insurance Co., 316 U.S. 491, 62 S.Ct. 1173, 86 L.Ed. 1620 (1942) survives Colorado River. Rather the Court elects to denominate the "exceptional circumstances" presented in the instant case as factors to be

considered in determining how to exercise the discretionary authority afforded by 28 U.S.C. §2201. And in that regard, the Court finds the reasoning of the analogous case of Heritage Land, supra. at 1267, persuasive. There, the Court first identified the factors referenced in Colorado River at 96 S.Ct. at 1246-47 and Cone Memorial Hospital v. Mercury Construction, 460 U.S. 1, 19-20, 103 S.Ct. 92, 938-941, 74 L.Ed.2d 765 (1983), to-wit:

Whether the cases are in rem and involve the same property, whether there is a policy of avoiding piecemeal litigation, which of the concurrent forums first obtained jurisdiction, what law is applicable, and whether the federal forum would be inconvenient.

The notably distinguishing characteristic of Heritage is that the case had progressed much further than the federal case. Here, there has been no significant pre-trial development of the case in either jurisdiction. Nevertheless, the Court has balanced the factors identified in Heritage and finds that they tip the scale in favor of dismissal. Therefore, the Court is persuaded that Defendant's Motion to Dismiss should be granted.

ORDERED this 29th day of March, 1993.


JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 29 1993

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ESTES L. LESTON,
Plaintiff,

vs.

No. 91-C-983-E

DONNA E. SHALALA, Secretary
of Health and Human Services,


Defendant.

ENTERED ON DOCKET
DATE MAR 30 1993

ORDER

The Court has for consideration the Report and Recommendation of the U. S. Magistrate Judge, filed on February 17, 1993, which affirmed the decision of the Secretary of Health and Human Services denying Social Security Disability Benefits to the Plaintiff. The Court has reviewed the record in light of the applicable law and finds that the Report and Recommendation of the U. S. Magistrate Judge should and hereby is adopted as the Order of this Court.

DATED this 29TH day of March, 1993.


JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

14

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET

DATE MAR 30 1993

TIMOTHY DODD HARVEY,

Plaintiff,

vs.

No. 91-C-743-E

GARY MAYNARD; RON CHAMPION;
and the MEDICAL DIRECTOR of
the Oklahoma State Board of
Corrections;

Defendants.

FILED

MAR 29 1993

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER AND JUDGMENT

COMES NOW before the Court the Motion to Dismiss, which has been converted to a Motion for Summary Judgment, filed by the Defendants (docket #9). For the reasons stated herein, Defendants' Motion is granted.

Although the relief contemplated by Federal Rule of Civil Procedure 56 is drastic and should be applied with caution so that litigants will have an opportunity for trial on bona fide factual disputes¹, summary judgment shall be rendered if the pleadings and other documents on file with the Court show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548 (1986).

The Court has reviewed the pleadings and filings in this action, and finds, construing the pleadings liberally in favor fo

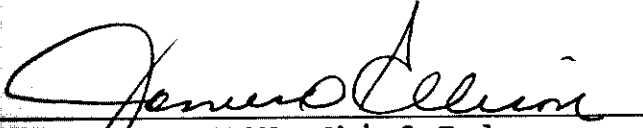
¹ Redhouse v. Quality Ford Sales, Inc., 511 F.2d 230, 234 (10th Cir. 1975); Jones v. Nelson, 484 F.2d 1165, 1168 (10th Cir. 1973); Machinery Center, Inc. v. Anchor National Life Insurance Co., 434 F.2d 1, 6 (10th Cir. 1970).

15

the Plaintiff and considering all factual inferences tending to show triable issues in a light most favorable to the existence of such issues, that material issues of fact do not remain to be litigated and that judgment should be entered as a matter of law in favor of Defendants. The Court finds that none of Plaintiff's Civil Rights have been violated to date.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant's Motion for Summary Judgment is hereby granted.

SO ORDERED this 29th day of March, 1993.


JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 26 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

EUGENE T. FOUST,
Petitioner,

vs.

RON CHAMPION, et al.,
Respondents.

No. 89-C-611-E
89-C-642-E

ENTERED ON DOCKET

DATE MAR 29 1993

ORDER

In a prior order filed on July 1, 1992, the above cases were held in abeyance. The State of Oklahoma was granted 120 days to grant Petitioner leave to appeal his convictions out of time to the Oklahoma Court of Criminal Appeals, and to provide him with assistance of counsel. If Oklahoma granted Petitioner leave to appeal out of time, the cases were to be dismissed.

A review of the record reveals that Petitioner was granted leave to appeal out of time, his appeals have been perfected, counsel has been appointed, and briefs have been filed in all of Petitioner's cases (see status report filed January 25, 1993). Therefore, pursuant to the court's prior order, the instant petitions shall be dismissed.


Petitioner's pending motions shall be denied as moot. The court notes that if Petitioner wishes to challenge delay now occurring in his pending state appeals, he should file a separate action in that regard.

IT IS, THEREFORE, HEREBY ORDERED that the above-entitled actions are dismissed. All pending motions are accordingly moot.

5

The Clerk shall file a copy of this order in both of the above-entitled cases.

SO ORDERED THIS 25TH day of March, 1993.


JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET
DATE MAR 29 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 29 1993

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Leonard A. O'Neil, et al,

Plaintiff,

v.

Valley Feeds, Inc, et al,

Defendants.

Case No. 89-C-640-E

ADMINISTRATIVE CLOSING ORDER

The defendant Great Northern having filed its petition in bankruptcy and these proceedings being stayed thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

IF, within 45 days of a final adjudication of the bankruptcy proceedings, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 25th day of March, 1983.


United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

RESOLUTION TRUST CORPORATION,)
as Conservator for Cimarron)
Federal Savings Association,)

Plaintiff,)

vs.)

STEPHEN HINKLE, et al.,)

Defendants.)

No. 91-C-757-E

MAR 29 1993
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE MAR 29 1993

ORDER AND JUDGMENT

This matter is before the Court on the Plaintiff's Renewed Motion for Summary Judgment. There being no Response filed by Defendants to the Plaintiff's Motion for Summary Judgment and more than ten (10) days having passed since the 20th of May, 1992--which is the date by which the Defendants were ordered to respond--the Court, pursuant to Local Rule 15(a), as amended effective May 1, 1988, concludes that Defendants have therefore waived any objection or opposition to the Plaintiff's Motion for Summary Judgment. See Woods Constr. Co. v. Atlas Chemical Indus. Inc., 337 F.2d 888, 890 (10th Cir. 1964). The facts set forth in Plaintiff's Motion are therefore deemed undisputed.

Rule 56(c) of the Federal Rules of Civil Procedure provides for summary judgment against a party who, after time for discovery, fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. Celotex Corp. v. Catrett, 106 S.Ct. 2548 (1986). Although the relief contemplated by Federal

Rule of Civil Procedure 56 is drastic and should be applied with caution so that litigants will have an opportunity for trial on bona fide factual disputes, Redhouse v. Quality Ford Sales, Inc., 511 F.2d 230, 234 (10th Cir. 1975), summary judgment shall be rendered if the pleadings and other documents on file with the Court show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

In a case such as this, where Defendants have utterly failed to submit any evidence to the Court to contradict the allegations of the Plaintiffs, the last two sentences of subsection (e) of Fed.R.Civ.Proc. 56 must be applied:


When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or otherwise, as provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

The record establishes in this case that Defendants have submitted no evidence beyond the pleadings and that Plaintiff has demonstrated beyond a reasonable doubt that no genuine issue as to any material fact remains. Further, Plaintiff has clearly established that Plaintiff is entitled to judgment on the four promissory notes in issue and is further entitled to foreclosure on the Mortgage as a matter of law. Accordingly, the Court, having reviewed the pleadings and filings in this action, finds that no material issues of fact exist to be litigated and that judgment should be entered as a matter of law in favor of Plaintiff.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff's

Motion for Summary Judgment is hereby granted.

ORDERED this 29th day of March, 1993.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 29 1993

LINDA H. LOUGHRIDGE,

Plaintiff,

vs.

F. STEPHEN ALLEN, and
PAINWEBBER, Inc.,

Defendants.

No. 91-C-960-E

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET


DATE MAR 29 1993

ORDER AND JUDGMENT

COMES NOW BEFORE THE COURT Defendants' Motion for Entry of Judgment. Plaintiff seeks from this action an Order vacating and remanding an Award of Arbitration entered August 12, 1991. The parties to this action held a telephone conference before the Court on the 12th day of June, 1992, wherein the parties agreed that Plaintiff's Motion for Summary Judgment would be dispositive of this action. After reviewing the file herein, this Court denied Plaintiff's Motion for Summary Judgment on August 18, 1992. The Court, by its Order, intended to deny Plaintiffs' requests to vacate or otherwise modify the Arbitration Award in issue. Accordingly, judgment should be entered in favor of Defendants.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment is hereby entered in favor of the Defendants, that the action be dismissed on the merits.

ORDERED this 29TH day of March, 1993.


JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

2

FILED

MAR 29 1993

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

IN RE: VERN O. LAING,
Debtor/Appellant.

Bky. No. 88-03881-C
Dist. Ct. No. 92-C-158-E

ENTERED ON DOCKET
MAR 29 1993
DATE

ORDER

This matter comes before the Court on appeal by the Debtor, Vern O. Laing, M.D. (hereinafter "Laing"), from the Order of the United States Bankruptcy Court for the Northern District of Oklahoma, entered on the 19th day of February, 1992. The creditors herein--Lawrence A.G. Johnson, Don Bradshaw, and Kay Barlow--seek dismissal of Laing's appeal. The preliminary issue to be addressed by this Court is whether this Court has jurisdiction to hear this appeal.

United States Code, title 28, §158 provides as follows on the issue of when a United States District Court has jurisdiction to hear an appeal from an order of a United States Bankruptcy Court:

(a) The district court of the United States shall have jurisdiction to hear appeals from final judgments, orders, and decrees, and, with leave of the court from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title....

(c) An appeal under subsections (a) and (b) of this section shall be taken in the same manner as appeals in civil proceedings generally are taken to the courts of appeals from the district courts....

In order for this Court to have jurisdiction to hear this appeal, the bankruptcy order from which the Debtor appeals must have been an appealable "final judgment, order or decree", otherwise, the Bankruptcy Court must grant Debtor leave to appeal any

6

interlocutory, and otherwise unappealable, orders. The Court will first address whether the order of the Bankruptcy Court was a final, appealable order.

The Order of the Bankruptcy Court, from which Laing appeals to this Court, converted Laing's Chapter 11 petition to a proceeding under Chapter 7 of the United States Bankruptcy Code, and further ordered Debtor's Chapter 7 bankruptcy case, filed previously by the Debtor in Dallas (In re: Vern O'Dean Laing, M.D., Case No. 391-39680-SAF-7, United States Bankruptcy Court for the Northern District of Texas, Dallas Division) to be transferred to the United States Bankruptcy Court for the Northern District of Oklahoma, where the above action is now pending (In re: Vern O. Laing, M.D., Case No. 88-03881-C).

This Court is bound by the standard of finality set forth by the Tenth Circuit in Re: Magic Circle Energy Corp., 889 F.2d 950, 953 (10th Cir. 1989) and Eddleman v. U.S. Dept. of Labor, 923 F.2d 782, 786-87, n.7 (10th Cir. 1991). In Magic Circle, the Tenth Circuit stated on the issue of how to determine when an order is a "final order" within the meaning of 28 U.S.C. §158(d), as follows:

The Tenth Circuit has interpreted "final order" for purposes of § 158(d) in traditional finality terms...rather than according to the more flexible standard adopted by other circuits for identifying "final orders" of bankruptcy judges. We have held that adhering to the more traditional view of finality for our review of district court orders, i.e. that "[t]o be final and appealable, the district court's order must end the litigation and leave nothing to be done except execute the judgment,"...further the policy underlying the finality doctrine by controlling piecemeal adjudication and eliminating delays caused by interlocutory appeals.

Magic Circle at 953 (citations omitted) (quoting In re: Glover,

Inc., 697 F.2d 907,909 (10th Cir. 1983)). In an attempt to clarify this apparent strict adherence to the traditional, and more restricted, view of finality, the Tenth Circuit subsequently indicated in Eddleman, supra., 923 F.2d at 786-87, n. 7, that the flexible approach may be a traditional exception to the traditional rule in the context of a bankruptcy proceeding.

Magic Circle's ostensible flat rejection of the flexible finality rule in bankruptcy is somewhat misleading. The flexible rule developed because, if "traditional" rules of finality applied in bankruptcy, no appeals would be heard in any bankruptcy matter until a final order issued as to the entire bankruptcy case...."Viewed realistically, a bankruptcy case is simply an aggregation of controversies, many of which would constitute individual lawsuits had a bankruptcy petition never been filed." In re: Martin Bros. Toolmakers, Inc., 796 F.2d 1435, 1437 (11th Cir. 1986). Every circuit, including this one, recognizes explicitly or implicitly that "traditional" rules of finality must be adapted to allow appeals of separate disputes within the bankruptcy case, without waiting for the entire case to be final. Thus, while Magic Circle purports to reject the flexible approach by treating discrete matters within a bankruptcy case as final orders which may be heard on appeal before the entire bankruptcy is finished.

It is clear that, despite the "traditional" rule announced in Magic Circle, this Court has not completely rejected the flexible rule. Rather, we have placed limits on its application. We are flexible in allowing appeals of discrete disputes within a bankruptcy case. We demand, however, that each discrete dispute come to this court in a posture which satisfies "traditional" finality principles. Interpreted in this way, Magic Circle may be reconciled with the other opinions of this court....

The question therefore becomes whether this "discrete dispute" comes to this court in a manner which satisfies "traditional" finality principles.

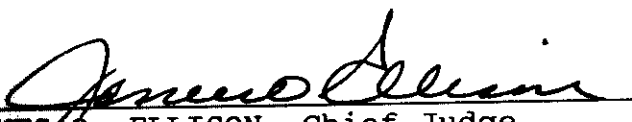
The Debtor in this action appeals an order of the Bankruptcy Court which in essence (1) transferred the venue of one of his pending bankruptcy petitions to that of the other of his pending

petitions, and (2) converted the latter of the petitions from a petition under Chapter 11 of the Bankruptcy Code to a petition under Chapter 7. As an order transferring venue, the bankruptcy order in issue in and of itself is an unappealable, interlocutory order according to the Tenth Circuit. Adelman v. Fourth National Bank & Trust Co., 893 F.2d 264, 265 (10th Cir. 1990)[citing McKinney v. Gannet Co., 694 F.2d 1240, 1246 (10th Cir. 1982)].

However, in this case the order in issue did more than merely transfer the Dallas Chapter 7 petition to Tulsa--it also denied Debtor's motion to dismiss the Chapter 11 petition pending in Tulsa, and instead converted the pending Chapter 11 petition to a Chapter 7. In effect the order from which Debtor appeals consolidated all of the Debtor's pending bankruptcy petitions for resolution within the same court and under the same rules. In light of these facts, the Court cannot find that this order falls within the Tenth Circuit's understanding of "final order".

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Debtor's motion for leave to appeal is hereby denied. Accordingly, Debtor's appeal is dismissed.

ORDERED this 29th day of March, 1993.


JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

FILED

MAR 25 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

HUBERT C. POWELL,

Plaintiff,

vs.

OWENS-CORNING FIBERGLAS
CORPORATION, et al.,

Defendants.

CASE NO. 88-C-555E

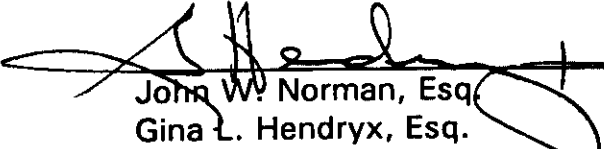
ENTERED ON DOCKET


JUDGE JAMES O. ELLISON

DATE MAR 29 1993

STIPULATION OF DISMISSAL WITH
PREJUDICE OF OWENS-CORNING
FIBERGLAS CORPORATION

COME NOW Hubert C. Powell, plaintiff, by and through his counsel, and Owens-Corning Fiberglas Corporation, by and through its counsel, and hereby stipulate to dismissal with prejudice of all actions, as to Owens-Corning Fiberglas Corporation only, with each party paying their own costs. The Clerk of the Court is hereby authorized to enter such dismissal upon the records of that office.


John W. Norman, Esq.
Gina L. Hendryx, Esq.
NORMAN & EDEM
Renaissance Centre East
127 Northwest 10th
Oklahoma City, OK 73103-4927
Telephone: 405/272-0200
ATTORNEYS FOR THE PLAINTIFF


David D. Schlachter, Esq.
TILLY & GRAVES, P.C.
Suite 1001 Ptarmigan Place
3773 Cherry Creek North Drive
Denver, CO 80209-3830
Telephone: 303/321-8811

Scott Rhodes, Esq.
PIERCE, COUCH, HENDRICKSON,
JOHNSTON & BAYSINGER
1109 North Francis
Oklahoma City, OK 73106

ATTORNEYS FOR OWENS-CORNING
FIBERGLAS CORPORATION

Dated: 3-15-93

238

4

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 26 1993

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Mid America Nursing Services,

Defendant.

Civil Action No. 92-C-71-E

ENTERED ON DOCKET
MAR 29 1993
DATE

DEFAULT JUDGMENT

This matter comes on for consideration this 25th day of March, 1993, the Plaintiff appearing by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Kathleen Bliss Adams, Assistant United States Attorney, and the Defendant, Mid America Nursing Services, appearing not.

The Court being fully advised and having examined the court file finds that Defendant, Mid America Nursing Services, was served with Summons and Complaint on January 30, 1992. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.


IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Plaintiff have and recover judgment against the Defendant, Mid America Nursing Services, in the amount of \$18,830.00 plus accrued interest of \$5,679.38 as of March 19, 1993, plus interest thereafter at the rate of 6 percent per annum until judgment;

5

\$10,067.00, plus accrued interest of \$2,875.42 as of March 19, 1993, plus interest thereafter at the rate of 6 percent per annum until judgment; \$28,627.00, plus accrued interest of \$8,619.01 as of March 19, 1993, plus interest thereafter at the rate of 7 percent per annum until judgment, a surcharge of 10% of the amount of the debt in connection with the recovery of the debt to cover the cost of processing and handling the litigation and enforcement of the claim for this debt as provided by 28 U.S.C. § 3011, plus interest thereafter at the current legal rate of 3.21 percent per annum until paid, plus costs of this action.


United States District Judge

Submitted By:


KATHLEEN BLISS ADAMS, OBA# 13625
Assistant United States Attorney
3900 United States Courthouse
333 West 4th Street
Tulsa, Oklahoma 74103
(918) 581-7463

15

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ROBERT E. FOREMAN and ROSEMARY,)
FOREMAN,)

Plaintiffs,)

v.)

YELLOW FREIGHT SYSTEMS, INC.,)
a foreign corporation,)

Defendant.)

No. 92-C-851 E

FILED

MAR 23 1993

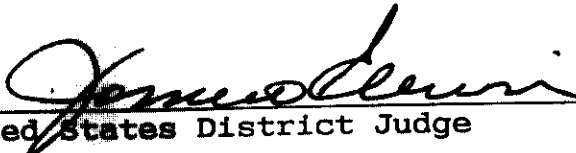
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET

DATE MAR 29 1993

ORDER OF DISMISSAL WITH PREJUDICE

NOW ON this 25th day of March, 1993, it appearing to
the Court that this matter has been compromised and settled, this
case is herewith dismissed with prejudice to the refiling of a
future action.


United States District Judge

336-270
STIP.MC

16

6

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

1993
Richard M. Lawrence, CL. &
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

THOMAS LEE PYLE,

Plaintiff,

vs.

YELLOW FREIGHT SYSTEMS, INC., a
foreign corporation,

Defendant.

No. 92-C-852 E

ENTERED ON DOCKET
MAR 29 1993
DATE

ORDER OF DISMISSAL WITH PREJUDICE

NOW ON this 25th day of March, 1993, it appearing to the Court
that this matter has been compromised and settled, this case is herewith dismissed with
prejudice to the refiling of a future action.


United States District Judge

123

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

WILLIAM A. SANDERS, et al.

Counterclaimants,

vs.

SAFECO INSURANCE COMPANY OF
AMERICA, a foreign corporation,

and

THE AETNA CASUALTY AND SURETY
COMPANY,

Counterdefendants.

FILED

MAR 29 1993
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

No. 88-C-189-E

ENTERED ON DOCKET
MAR 29 1993

DATE

ORDER OF DISMISSAL WITH PREJUDICE

Pursuant to stipulation filed herein, the parties, Carol Sanders and Safeco Insurance Company, have stipulated that all questions and issues existing between the said parties have been fully and completely disposed of by settlement and have requested the entrance of an Order of Dismissal with Prejudice. IT IS ORDERED that the claims of Carol Sanders against Safeco Insurance Company and Safeco's declaratory judgment action as it applies to Carol Sanders should be and the same is hereby dismissed with prejudice.

DATED this 25th day of March, 1993.

137

JUDGE OF THE DISTRICT COURT

174

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DEAN E. WILLIAMS,
Plaintiff,

vs.

MAHENDRA R. PATEL, d/b/a
STRATFORD HOUSE INN,
Defendant.

No. 91-C-789-E

FILED

1993
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET


DATE ~~MAR 29 1993~~

ORDER OF DISMISSAL WITH PREJUDICE

Pursuant to application filed herein, the parties have stipulated that all questions and issues existing between the said parties have been fully and completely disposed of by settlement and have requested the entrance of an order of dismissal with prejudice. IT IS ORDERED that the case should be and the same is hereby dismissed with prejudice and the matter fully, finally and completely disposed of.

DATED this 25th day of March, 1993.


JUDGE OF THE DISTRICT COURT

Approved as to form
& content:

Haly.

176

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 26 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

EUGENE T. FOUST,

Petitioner,

vs.

RON CHAMPION, et al.,

Respondents.

No. 89-C-611-E
89-C-642-E

ENTERED ON DOCKET
MAR 29 1993
DATE _____

ORDER

In a prior order filed on July 1, 1992, the above cases were held in abeyance. The State of Oklahoma was granted 120 days to grant Petitioner leave to appeal his convictions out of time to the Oklahoma Court of Criminal Appeals, and to provide him with assistance of counsel. If Oklahoma granted Petitioner leave to appeal out of time, the cases were to be dismissed.

A review of the record reveals that Petitioner was granted leave to appeal out of time, his appeals have been perfected, counsel has been appointed, and briefs have been filed in all of Petitioner's cases (see status report filed January 25, 1993). Therefore, pursuant to the court's prior order, the instant petitions shall be dismissed.


Petitioner's pending motions shall be denied as moot. The court notes that if Petitioner wishes to challenge delay now occurring in his pending state appeals, he should file a separate action in that regard.

IT IS, THEREFORE, HEREBY ORDERED that the above-entitled actions are dismissed. All pending motions are accordingly moot.

5

The Clerk shall file a copy of this order in both of the above-entitled cases.

SO ORDERED THIS 25TH day of March, 1993.


JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

FILED
DATE MAR 26 1993

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROY D. RAMBO; PEGGY J. RAMBO;
DOUGLAS FLEMING; NORMA FLEMING;
COUNTY TREASURER, Tulsa County,
Oklahoma; and BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

FILED

MAR 25 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION NO. 92-C-382-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 25 day
of March, 1993. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Wyn Dee Baker, Assistant United States
Attorney; the Defendants, County Treasurer, Tulsa County,
Oklahoma, and Board of County Commissioners, Tulsa County,
Oklahoma, appear by J. Dennis Semler, Assistant District
Attorney, Tulsa County, Oklahoma; and the Defendants, Roy D.
Rambo, Peggy J. Rambo, Douglas Fleming, and Norma Fleming, appear
not, but make default.

The Court being fully advised and having examined the
court file finds that the Defendant, Roy D. Rambo, acknowledged
receipt of Summons and Complaint on May 28, 1992; that the
Defendants, Douglas Fleming and Norma Fleming, acknowledged
receipt of Summons and Complaint on May 15, 1992; that Defendant,
County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of

Summons and Complaint on May 19, 1992; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on May 8, 1992.

The Court further finds that the Defendant, Peggy J. Rambo, was served by publishing notice of this action in the Tulsa Daily Commerce & Legal News, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning September 25, 1992, and continuing through October 30, 1992, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendant, Peggy J. Rambo, and service cannot be made upon said Defendant within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendant without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known address of the Defendant, Peggy J. Rambo. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Secretary of

Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Wyn Dee Baker, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the party served by publication with respect to her present or last known place of residence and/or mailing address. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendant served by publication.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers June 1, 1992; that the Defendants, Roy D. Rambo, Peggy J. Rambo, Douglas Fleming, and Norma Fleming, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Thirty-Six (36), Block Two (2), Suburban Acres Fourth Addition to the City of Tulsa, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on August 15, 1975, the Defendants, Roy D. Rambo and Peggy J. Rambo, executed and

delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, their mortgage note in the amount of \$12,250.00, payable in monthly installments, with interest thereon at the rate of 8.5 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Roy D. Rambo and Peggy J. Rambo, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated August 15, 1975, covering the above-described property. Said mortgage was recorded on August 15, 1975, in Book 4178, Page 297, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Roy D. Rambo and Peggy J. Rambo, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Roy D. Rambo and Peggy J. Rambo, are indebted to the Plaintiff in the principal sum of \$9,539.44, plus interest at the rate of 8.5 percent per annum from September 1, 1990 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$299.85 for publication fees.

The Court further finds that the Defendants, Douglas Fleming and Norma Fleming, are in default and have no right, title or interest in the subject real property.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, claim no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against Defendants, Roy D. Rambo in personam and Peggy J. Rambo in rem, in the principal sum of \$9,539.44, plus interest at the rate of 8.5 percent per annum from September 1, 1990 until judgment, plus interest thereafter at the current legal rate of 3.21 percent per annum until paid, plus the costs of this action in the amount of \$299.85 for publication fees, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Douglas Fleming, Norma Fleming, and County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Roy D. Rambo and Peggy J. Rambo, to satisfy the in personam and in rem judgment of the Plaintiff

herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney

Paul Prunell

for

WYN DEE BAKER, OBA #465
Assistant United States Attorney
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

J. Dennis Semler

J. DENNIS SEMLER, OBA #8076
Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, Oklahoma 74103
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 92-C-382-B

WDB/css

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MARGARET PARKER and,
ROBERT PARKER,

Plaintiffs,

vs.

MIAMI PUBLIC SCHOOLS; MIAMI
BOARD OF EDUCATION; and JACK
UTTERBACK, an individual,

Defendants.

FILED

MAR 25 1993

Case No. 92-C-808B Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

**STIPULATION FOR DISMISSAL
WITH PREJUDICE**

The plaintiffs, Margaret Parker and Robert Parker, and the defendants, Miami Public Schools, Miami Board of Education and Jack Utterback, pursuant to Rule 41(a)(1)(ii), FED. R. CIV. P., hereby stipulate that the instant action be discontinued and dismissed with prejudice, with plaintiffs and defendants to bear their own costs.

HOWARD & WIDDOWS

By: 

George Gibbs, OBA #11843
2021 South Lewis, Suite 470
Tulsa, OK 74104
(918) 744-7440

**Attorneys for Plaintiffs, Margaret Parker and
Robert Parker**

ROSENSTEIN, FIST & RINGOLD

By: 

Jerry A. Richardson, OBA #10455
525 South Main, Suite 300
Tulsa, OK 74103
(918) 585-9211

**Attorneys for Defendants, Miami School
District, Miami Board of Education and Jack
Utterback**

R.P. MP

DATE **MAR 26 1993**

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

WILLIAM A. SANDERS, et al.

Counterclaimants,

vs.

SAFECO INSURANCE COMPANY OF
AMERICA, a foreign corporation,

and

THE AETNA CASUALTY AND SURETY
COMPANY,

Counterdefendants.

No. 88-C-189-E

FILED

MAR 25 1993

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

**STIPULATION OF DISMISSAL WITH PREJUDICE
BETWEEN SAFECO INSURANCE COMPANY AND
THE HOUGHTON INTEREST AND RESERVATION
OF CAUSE OF ACTION AND CLAIMS AS
TO AETNA CASUALTY AND SURETY COMPANY**

COME NOW the parties, Ashley Houghton, Mrs. Ashley Houghton, Tena Houghton, Individually, and as Personal Representative of the Estate of Michael William Houghton and Safeco Insurance Company, having settled all claims existing between them, and enter into this stipulation of dismissal with prejudice. All rights and causes of action by the Houghtons against Aetna Casualty and Surety Company are reserved and preserved.

MOYERS, MARTIN, SANTEE,
IMEL & TETRICK
OF COUNSEL

SANDERS & CARPENTER
OF COUNSEL


SCOTT SAVAGE

320 South Boston Building, Ste. 920
Tulsa, Oklahoma 74103


RICHARD CARPENTER (OBA 1504)

624 S. Denver, Suite 202
Tulsa, Oklahoma 74119
(918) 582-5181

ATTORNEYS FOR SAFECO INSURANCE CO.

CERTIFICATE OF MAILING

This is to certify that a true and correct copy of the above and foregoing pleading was mailed to:

Mr. Jack Goree
Goree & King
Southern Oaks Office Park
7335 S. Lewis, Suite 306
Tulsa, Oklahoma 74136

on this 25 day of March, 1993, with postage prepaid.

Richard Carpenter

ENTERED ON DOCKET
DATE MAR 26 1993

FILED

MAR 25 1993

RICHARD M. LAWRENCE
CLERK
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OK

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

CRAWFORD ENTERPRISES, INC.)
 Plaintiff,)
))
vs.))
))
))
DAVID L. HOWARD d/b/a M&H GATHERING,)
INC., and M&H GAS GATHERING, INC.)
 Defendants,)
))
vs.))
))
))
ELI MASSO,)
 Garnishee.)

No. 83-C-859-C /

ORDER


Before the Court is the motion of the Plaintiff, Crawford Enterprises, Inc. for attorney fees. Crawford seeks an award of fees in the sum of \$67,240.50. There is no record of objection by Eli Masso to the amount of the fees requested.

In the absence of an objection by Eli Masso, the Court finds that the amount of fees requested is reasonable. Additionally, the Court finds that the total fee requested is reasonable in view of the length of time this case has been in litigation (the garnishment affidavit against Eli Masso was filed on March 1, 1984), the matter was tried to the Court on June 2, 1986, on three separate occasions the case has been appealed to the Tenth Circuit. The mandate affirming the Court's June 26, 1991 order was issued on November 23, 1992. The request for attorney fees covers a period of almost nine years.

Accordingly, the Court finds that the Plaintiff, Crawford

Enterprises, Inc. is hereby awarded attorney fees as against Eli Masso in the sum of \$67,240.50.

IT IS SO ORDERED this 25th day of March, 1993.

A handwritten signature in cursive script, appearing to read "H. Dale Cook", written over a horizontal line.

H. Dale Cook
U. S. District Judge

ENTERED ON DOCKET

MAR 26 1993
FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MAR 25 1993

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

PHILLIP A. WRIGHT, Personal
Representative of the Estate
of Helen Wright, Deceased,

Plaintiff,

v.

No. 91-C-442-B

SPALDING AND EVENFLO COMPANIES,
INC., d/b/a JUVENILE FURNITURE
COMPANY, a/k/a QUESTOR JUVENILE
FURNITURE COMPANY,

Defendant.


ORDER

The Court has for consideration Defendant's request for setoff (docket #115) of the amount received by Plaintiff from other tortfeasors against the \$1 million jury verdict obtained by the Plaintiff herein on March 11, 1993. The parties agree that \$55,000.00 should be set off plus an appropriately allocated amount of \$149,000.00 paid from other third-party tortfeasor sources relative to the July 30, 1989 vehicle accident. Both parties have agreed on the record that the value of Plaintiff's wrongful death claims regarding his deceased wife, Marlene, and daughter, Helen, far exceed the total sum of \$149,000.00. The Court, having considered the applicable elements of damage to each wrongful death claim, concludes that the sum of \$149,000.00 should be split equally. Thus, the total setoff sum is \$129,500.00 (\$55,000.00 plus \$74,500.00=\$129,500.00).

Plaintiff is directed to prepare a judgment including setoff, pre- and postjudgment interest previously discussed, costs assessed against the Defendant if timely applied for pursuant to Local Rule

6, with each party to pay their own respective attorneys fees. Plaintiff should obtain approval from the Defendant of the subject judgment and provide same to the Court for signing and filing on Monday, March 29, 1993; failing in which the parties should promptly advise the Court so the Court can set down a hearing to resolve any dispute.

DATED this 25 day of March, 1993.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RICKY DEAN MATTHEW a/k/a
RICKY D. MATTHEW a/k/a RICKY
MATTHEW; ALLIE MARLENE MATTHEW
a/k/a ALLIE M. MATTHEW a/k/a
MARLENE MATTHEW; STATE OF
OKLAHOMA ex rel. OKLAHOMA TAX
COMMISSION; COUNTY TREASURER,
Tulsa County, Oklahoma; and
BOARD OF COUNTY COMMISSIONERS,
Tulsa County, Oklahoma,

Defendants.

FILED

MAR 25 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION NO. 92-C-1058-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 25 day
of March, 1993. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Peter Bernhardt, Assistant United States
Attorney; the Defendants, County Treasurer, Tulsa County,
Oklahoma, and Board of County Commissioners, Tulsa County,
Oklahoma, appear by J. Dennis Semler, Assistant District
Attorney, Tulsa County, Oklahoma; the Defendant, State of
Oklahoma ex rel. Oklahoma Tax Commission, appears by its attorney
M. Diane Allbaugh; and the Defendants, Ricky Dean Matthew a/k/a
Ricky D. Matthew a/k/a Ricky Matthew and Allie Marlene Matthew
a/k/a Allie M. Matthew a/k/a Marlene Matthew, appear not, but
make default.

The Court being fully advised and having examined the
court file finds that the Defendant, Ricky Dean Matthew a/k/a

Ricky D. Matthew a/k/a Ricky Matthew, acknowledged receipt of Summons and Complaint on December 7, 1992; that the Defendant, Allie Marlene Matthew a/k/a Allie M. Matthew a/k/a Marlene Matthew, acknowledged receipt of Summons and Complaint on November 24, 1992; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, acknowledged receipt of Summons and Complaint on November 23, 1992; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on November 23, 1992; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on November 24, 1992.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on December 17, 1992; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, filed its Answer, Counterclaim and Cross-Claim on December 15, 1992; and that the Defendants, Ricky Dean Matthew a/k/a Ricky D. Matthew a/k/a Ricky Matthew and Allie Marlene Matthew a/k/a Allie M. Matthew a/k/a Marlene Matthew, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that on February 14, 1989, Ricky Dean Matthew and Allie Marlene Matthew filed their voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 89-00333-W. On May 26, 1989, a Discharge of Debtor was filed discharging the debtors from all dischargeable debts. On

June 26, 1989, Bankruptcy Case No. 89-00333-W, United States Bankruptcy Court, Northern District of Oklahoma, was closed.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Two (2), Block Three (3), EL RIO VISTA II, an Addition to the City of Owasso, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on April 16, 1987, Ricky Dean Matthew and Allie Marlene Matthew executed and delivered to Security Bank their mortgage note in the amount of \$73,200.00, payable in monthly installments, with interest thereon at the rate of 9 percent per annum.

The Court further finds that as security for the payment of the above-described note, Ricky Dean Matthew and Allie Marlene Matthew executed and delivered to Security Bank a real estate mortgage dated April 16, 1987, covering the above-described property, situated in the State of Oklahoma, Tulsa County. This mortgage was recorded on April 20, 1987, in Book 5016, Page 1483, in the records of Tulsa County, Oklahoma.

The Court further finds that on April 16, 1987, Security Bank assigned the above-described mortgage to Mortgage Clearing Corporation. This Assignment of Mortgage was recorded on April 20, 1987, in Book 5016, Page 1487, in the records of Tulsa County, Oklahoma, and was re-recorded on November 5, 1991,

in Book 5359, Page 2586, in the records of Tulsa County, Oklahoma.

The Court further finds that on September 1, 1988, Mortgage Clearing Corporation assigned the above-described mortgage to Triad Bank, N.A.. This Assignment of Mortgage was recorded on July 18, 1989, in Book 5195, Page 644, in the records of Tulsa County, Oklahoma.

The Court further finds that on October 18, 1991, Triad Bank, N.A. assigned the above-described mortgage to the Secretary of Veterans Affairs. This Assignment of Mortgage was recorded on January 14, 1992, in Book 5374, Page 0017, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Ricky Dean Matthew a/k/a Ricky D. Matthew a/k/a Ricky Matthew and Allie Marlene Matthew a/k/a Allie M. Matthew a/k/a Marlene Matthew, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Ricky Dean Matthew a/k/a Ricky D. Matthew a/k/a Ricky Matthew and Allie Marlene Matthew a/k/a Allie M. Matthew a/k/a Marlene Matthew, are indebted to the Plaintiff in the principal sum of \$71,013.54, plus interest at the rate of 7.5 percent per annum from November 1, 1991 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendant, County Treasurer, Tulsa County, Oklahoma, has a lien on the property

which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$818.00, plus penalties and interest, for the year 1992. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, County Treasurer, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the total amount of \$109.00 which became a lien on the property as of 1991 (\$58.00) and 1992 (\$51.00). Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, has a lien on the property which is the subject matter of this action in the total amount of \$1,343.99, together with interest and penalty according to law, by virtue of income tax warrant No. ITI8801160200, dated August 8, 1988, and recorded on August 15, 1988, in Book 5121, Page 978, in the records of Tulsa County, Oklahoma; and by virtue of income tax warrant No. ITI8902434200, dated December 1, 1989, and recorded on December 11, 1989, in Book 5224, Page 1823 in the records of Tulsa County, Oklahoma. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, claims no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against Defendants,

Ricky Dean Matthew a/k/a Ricky D. Matthew a/k/a Ricky Matthew and Allie Marlene Matthew a/k/a Allie M. Matthew a/k/a Marlene Matthew, in the principal sum of \$71,013.54, plus interest at the rate of 7.5 percent per annum from November 1, 1991 until judgment, plus interest thereafter at the current legal rate of 3.21 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$818.00, plus penalties and interest, for ad valorem taxes for the year 1992, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the total amount of \$109.00 for personal property taxes for the years 1991 and 1992, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, State of Oklahoma ~~ex~~ rel. Oklahoma Tax Commission, have and recover judgment in the total amount of \$1,343.99, together with interest and penalty according to law, by virtue of income tax warrant No. ITI8801160200, dated August 8, 1988, and recorded on August 15, 1988, in Book 5121, Page 978, in the records of Tulsa County, Oklahoma; and by virtue of income tax

warrant No. ITI8902434200, dated December 1, 1989, and recorded on December 11, 1989, in Book 5224, Page 1823 in the records of Tulsa County, Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, has no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Ricky Dean Matthew a/k/a Ricky D. Matthew a/k/a Ricky Matthew and Allie Marlene Matthew a/k/a Allie M. Matthew a/k/a Marlene Matthew, to satisfy the in rem judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisalment the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$818.00, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

Third:

In payment of the judgment rendered herein
in favor of the Plaintiff;

Fourth:

In payment of Defendant, County Treasurer,
Tulsa County, Oklahoma, in the amount of
\$109.00, personal property taxes which are
currently due and owing;

Fifth:

In payment of the judgment rendered herein
in favor of the Defendant, State of Oklahoma
ex rel. Oklahoma Tax Commission.

The surplus from said sale, if any, shall be deposited with the
Clerk of the Court to await further Order of the Court.

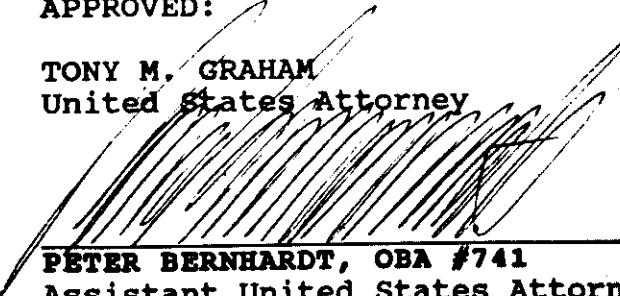
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from
and after the sale of the above-described real property, under
and by virtue of this judgment and decree, all of the Defendants
and all persons claiming under them since the filing of the
Complaint, be and they are forever barred and foreclosed of any
right, title, interest or claim in or to the subject real
property or any part thereof.


S/ THOMAS R. BRETT.

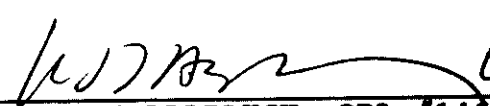
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney


PETER BERNHARDT, OBA #741
Assistant United States Attorney
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463


J. DENNIS SEMLER, OBA #8076
Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, OK 74103
(918) 584-0440
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

 OBA 14175 for
M. DIANE ALLBAUGH, OBA #14067
Assistant General Counsel
P.O. Box 53248
Oklahoma City, Oklahoma 73152-3248
(505) 521-3141
Attorney for Defendant,
State of Oklahoma ex rel.
Oklahoma Tax Commission

Judgment of Foreclosure
Civil Action No. 92-C-1058-B

PB/css

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE MAR 25 1993
FILED

MAR 24 1993

RICHARD M. LAWRENCE
CLERK
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OK

REBECCA ANDERSON HODO,
Plaintiff,

vs.

THE CITY OF CLAREMORE,
a Municipal Corporation,

and


TOM POOL, Mayor, an Individual,
Defendants.

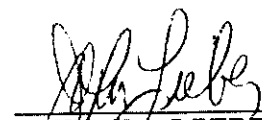
Case No. 92-C-277-E

STIPULATION OF DISMISSAL WITH PREJUDICE

The parties stipulate that this case is dismissed with
prejudice against the Defendants, City of Claremore and Tom Pool.


REBECCA ANDERSON HODO


DONNA J. PRIORE
DAVID L. WEATHERFORD
Attorneys for Plaintiff
1141 E. 37th Street
Tulsa, OK 74105


JOHN H. LIEBER
ELLER AND DETRICH
Attorneys for Defendants
2727 East 21st Street
Suite 200, Midway Building
Tulsa, Oklahoma 74114

ENTERED ON DOCKET

DATE MAR 25 1993

FILE 1

MAR 25 1993

Richard M. Lawton, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

BILLY F. WILLIAMS,

Plaintiff,

vs.

OWENS-CORNING FIBERGLAS
CORPORATION, et al.,

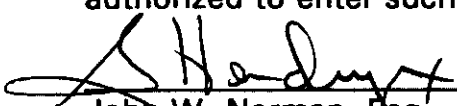
Defendants.

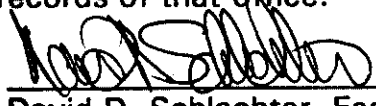
CASE NO. 88-C-716E

JUDGE JAMES O. ELLISON

STIPULATION OF DISMISSAL WITH
PREJUDICE OF OWENS-CORNING
FIBERGLAS CORPORATION

COME NOW Billy F. Williams, plaintiff, by and through his counsel, and Owens-Corning Fiberglas Corporation, by and through its counsel, and hereby stipulate to dismissal with prejudice of all actions, as to Owens-Corning Fiberglas Corporation only, with each party paying their own costs. The Clerk of the Court is hereby authorized to enter such dismissal upon the records of that office.


John W. Norman, Esq.
Gina L. Hendryx, Esq.
NORMAN & EDEM
Renaissance Centre East
127 Northwest 10th
Oklahoma City, OK 73103-4927
Telephone: 405/272-0200
ATTORNEYS FOR THE PLAINTIFF


David D. Schlachter, Esq.
TILLY & GRAVES, P.C.
Suite 1001 Ptarmigan Place
3773 Cherry Creek North Drive
Denver, CO 80209-3830
Telephone: 303/321-8811

Scott Rhodes, Esq.
PIERCE, COUCH, HENDRICKSON,
JOHNSTON & BAYSINGER
1109 North Francis
Oklahoma City, OK 73106

ATTORNEYS FOR OWENS-CORNING
FIBERGLAS CORPORATION

Dated: 3-15-93

232
h32

MAR 25 1993

FILED

MAR 25 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

PENNWELL PRINTING COMPANY, INC.)
a corporation,)
)
Plaintiff,)
)
vs.)
)
S.P.I. PUBLISHING CORPORATION,)
a corporation, d/b/a)
Supercomputing Review,)
)
Defendant.)

No. 92-C-952-C

JUDGMENT BY DEFAULT

The Defendant S.P.I. Publishing Corporation, a corporation, d/b/a/ Supercomputing Review, having failed to plead or otherwise defend in this action and its default having been entered,

Now, upon application of the Plaintiff and upon Affidavit of its counsel, Richard H. Foster, that the Defendant is indebted to Plaintiff in the sum of \$103,371.00, plus interest thereon at the rate of twelve (12%) percent per annum from August 1, 1992, that Defendant has been defaulted for failure to appear and that Defendant is not an infant or incompetent person, and is not the military service of the United States, it is hereby

ORDERED that Plaintiff PennWell Printing Company, Inc. shall be and is hereby granted judgment against Defendant S.P.I. Publishing Corporation, a corporation, d/b/a Supercomputing Review, in the principal amount of \$103,371.00, plus interest thereon at the rate of twelve (12%) percent per annum from August 1, 1992 until paid, plus costs.

NOTE

Dated this ____ day of March, 1993.

Richard M. Lawrence, Court Clerk

Fulls
by: _____, Deputy

[SEAL]

ENTERED ON DOCKET

DATE ~~MAR 25~~ 1993

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 23 1993

UNITED STATES OF AMERICA,

Plaintiff,

v.

JACK LEROY DAVID, et al,

Defendants.

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

91-C-0974-~~BE~~
CONS. with 89-C-594-E

ORDER

Appellant United States of America now appeals the decision of the United States Bankruptcy Court for the Northern District of Oklahoma, which decision modified the debtor's non-dischargeable Health Education Assistance Loan ("HEAL") loan.

Neither party challenges the Bankruptcy Court's finding that the HEAL loan is non-dischargeable. However, Appellant **alleges** that the Bankruptcy Court erred when it **disallowed** all post-petition interest and **ordered** a structured payment schedule for debtor to pay back the non-discharged portion of the HEAL loan.

Because this Court finds that the Bankruptcy Court acted within its broad equitable powers, the decision is **AFFIRMED**.¹

¹ The Appellant's argument that the Bankruptcy Court is without authority to modify a District Court judgment is without merit. The Bankruptcy Court does have authority and jurisdiction to modify an unsecured claim. Without such equitable powers, the entire purpose of a "fresh start" for the Chapter 7 debtor would be all but moot. See *In Re Kuhns*, 33 B.R. 759, 762 (Bkrcty S.D. Ohio 1983); *In Re Albert*, 25 B.R. 98, 102 (Bkrcty N.D. Ohio 1982); *In Re Brown*, 18 B.R. 219, 224 (Bkrcty D.Kansas 1982); *In Re Archie*, 7 B.R. 715, 719 (Bkrcty E.D. Virginia 1980).

20/9

CBW

I. Summary of the Facts²

The joint debtors, Dr. and Mrs. Jack David, ("Appellees") are married and reside in Boise City, Oklahoma. With the help of a \$6,247 HEAL loan, Dr. David obtained a chiropractic degree in 1984. Dr. David practiced in Tulsa, Oklahoma until 1990 when he and his wife moved to Boise City. The reason for the move was two-fold: First, Dr. David's practice was not going well and he hoped to do better in a small town; and second, Mrs. David's mother lived in Boise and needed attention due to poor health. However, even with the change in location, Dr. David testified that he is still having difficulties getting his chiropractic practice going.³ The debtors are still finding it difficult to meet their monthly financial obligations.

During the period of time between graduation from chiropractic college and the filing of the Chapter 7 petition, Dr. David obtained and repaid more than \$24,000 in business loans. In 1991, Dr. David purchased a used car by making a \$4500 down payment and monthly payments of approximately \$320. Dr. David has not missed a car payment. However, Dr. David has only made two payments totalling \$315.15 on his HEAL loan.⁴

Appellant obtained a default judgment against Dr. David in federal district court on January 10, 1990, for \$12,057.41 plus interest. On May 16, 1990, the debtors filed for Chapter 7 relief. Debtors then received a general discharge on September 11, 1990. A

² Since the facts in this case are undisputed, the summary presented here is taken from the Transcript of Proceedings, Bankruptcy Court, November 26, 1991, unless otherwise noted.

³ Transcript at 14 - 15.

⁴ These payments were made in July and August of 1984.

hearing on the dischargability of debtor's HEAL loan was set for November 26, 1991. After hearing testimony by both Dr. and Mrs. David, the Bankruptcy Court found the HEAL loan was nondischargeable. The Bankruptcy Court further denied all post-petition interest, and the debtors were ordered to make \$80 per month payments beginning February 1, 1992. Appellant is appealing the disallowance of post-petition interest and the court-ordered payment plan.

II. Standard of Review

On appeal from the Bankruptcy Court, the District Court sits as an appellate court. 28 U.S.C. §1334(a); *In Re Joyner*, 132 B.R. 436, 438 (D.Kan. 1991). Findings of fact are not to be set aside unless clearly erroneous; and conclusions of law are reviewed de novo. *In Re Joyner* at 438. Determination of whether, in light of all the facts of debtor's financial situation, non-dischargeability of debtor's HEAL loan is "unconscionable" requires conclusions from undisputed facts. See, *Colorado Springs National Bank v. United States*, 505 F.2d 1185 (10th Cir. 1974).

Where, as in the present case, facts are not in dispute and the findings of fact are not challenged, the reviewing court is **only** concerned with the legal conclusions drawn from the facts. *In Re Golf Course Builders Leasing, Inc.*, 768 F.2d 1167, 1169 (10th Cir. 1985). Thus, this Court will review de novo the Bankruptcy Court's decision.

III. Legal Analysis

Normally, the dischargeability of a student loan in bankruptcy proceedings is governed by 11 U.S.C. §523(a)(8). However, when the student loan involved is a HEAL loan, 42 U.S.C. §294f(g) governs dischargeability. See, *United States v. Wood*, 925 F.2d

1580, 1582 (7th Cir. 1991); *In Re Quinn*, 102 B.R. 865, 867 (Bkrtcy M.Fla. 1989); *In Re Green*, 82 B.R. 955, 959 (Bkrtcy N.D.Ill. 1988). Under §294f(g), a HEAL loan is not dischargeable in bankruptcy unless ". . . the Bankruptcy Court finds that nondischarge would be unconscionable." ⁵

In the present case, the Bankruptcy Court weighed the facts surrounding debtor's circumstances and determined it would not be unconscionable to declare the HEAL loan (consisting of principle and pre-petition interest) non-dischargeable.

The nondischargability of the principal and pre-petition interest is not challenged by either party. Thus, this Court need not examine that decision. The sole issue in this appeal is whether the Bankruptcy Court, using its equitable powers, can disallow all post-petition interest and structure a repayment plan on a HEAL loan.

Appellant first argues that federal law entitles it to post-judgment interest pursuant to 28 U.S.C. §1961.⁶ Appellant further alleges that awarding post-judgment interest is not discretionary with the court.⁷ However, it appears from the plain language of the statute that §1961 applies to the court rendering judgment. Thus, the prevailing party in a case in the United States District Court is entitled to interest and the court cannot disallow post-judgment interest. The situation here is different. The Bankruptcy Court is

⁵ 42 U.S.C. §294f(g) provides: "A debt which is a loan insured under the authority of this subpart may be released by a discharge in bankruptcy . . . , only if such discharge is granted:

(1) after the expiration of the 5-year period beginning on the first date . . . when repayment of such loan is required;
(2) upon a finding by the Bankruptcy Court that the nondischarge of such debt would be unconscionable; and
(3) upon the condition that the Secretary shall not have waived the Secretary's rights . . ."

In the present case, only the unconscionability determination was at issue in the bankruptcy proceedings.

⁶ 28 U.S.C. §1961(a) provides: "Interest shall be allowed on any money judgment in a civil case recovered in a district court."

⁷ Brief for the Appellant at 9.

not rendering judgment. Instead, it is determining the dischargability of a debt that simply happens to be evidenced by a judgment.

Furthermore, the Bankruptcy Code says that "the court shall determine a claim as of the date of the filing of the petition and shall allow such claims except to the extent that such interest is unmatured as of the date of the petition." 11 U.S.C. §502(b)(2); *In Re Reich*, 66 B.R. 554, 557 (Bkrcty.D.Colo. 1986); *Matter of Collins*, 24 B.R. 77, 79 (Bkrcty.E.D.Mich. 1982); and *In Re Morris*, 8 B.R. 924, 925 (Bkrcty.N.D.Ohio 1981). However, even if such a claim were allowed, it would be entitled to no status other than as a general unsecured claim, and would be discharged with other such claims. *In Re Reich* at 558. Reading §1961 and §502(b)(2) together, this Court finds that Appellant is entitled to post-judgment interest accruing until the filing of the Chapter 7 petition. Thus, the Bankruptcy Court was within its power to disallow any post-petition interest that accrued on debtor's HEAL loan.

The next issue is whether the Bankruptcy Court, as a court of equity, can disallow all post-discharge interest and structure a repayment plan. The parties concede that if the loan involved was a non-HEAL loan, the court would clearly have authority to modify the amount of the debt and create a payment plan.⁸ Both of the loan dischargability statutes, §523 and §294f, appear, on their face, to require "all or nothing" determinations of dischargability.⁹

⁸ Brief of Appellant at 11; Brief for the Appellee at 7 - 10.

⁹ 11 U.S.C. §523(a)(8) provides: "A discharge under section 727 . . . does not discharge an individual debtor from any debt . . . for an educational loan made, insured, or guaranteed by a governmental unit . . . unless . . . excepting such debt from discharge under this paragraph will impose an undue hardship on the debtor and the debtor's dependents."

However, a line of cases has developed that enable the Bankruptcy Court to use its equitable power to modify nondischargable, non-HEAL loans even without a finding of undue hardship. *In Re Berthiaume*, 138 B.R. 516, 521 (Bkrcty. W.D.Ky. 1992); *In Re Archie*, 7 B.R. 715, 719 (Bkrcty. E.D.Virg. 1980); *In Re Littell*, 6 B.R. 85, 89 (Bkrcty.D.Oregon 1980); *In Re Brown*, 18 B.R. 219 (Bkrcty. D.Kansas 1982); *In Re Albert*, 25 B.R. 98, 102 (Bkrcty.N.D.Ohio 1982); and *In Re Kuhns*, 33 B.R. 759, 762 (Bkrcty.S.D.Ohio 1983). The record indicates that the Bankruptcy Court Judge was aware of this line of cases when it fashioned its remedy.¹⁰ Thus, the government's argument is essentially that the present case involves a HEAL loan and should not be treated as a non-HEAL loan.

Several courts have concluded that the "all or nothing" result of §523(a)(8) for non-HEAL loans is unnecessarily harsh. *In Re Bowen*, 37 B.R. 171, 173 (Bkrcty.M.D.Fla. 1984); *In Re Berthiaume* at 521; *In Re Littell* at 89; *In Re Brown* at 224. In response to that view, some courts have found it to be appropriate to enter a judgment holding an educational loan to be nondischargable, yet still allowing a restructured repayment of the indebtedness. *In Re Bowen*, at 173; *In Re Littell* at 89; *In Re Brown* at 224.

While the foregoing cases deal with non-HEAL loans, neither this Court nor the parties have found any authority mandating different treatment for HEAL and non-HEAL loans. Both HEAL and non-HEAL loans are educational loans guaranteed by the government. Therefore, if a non-HEAL student loan can be modified, so can a HEAL

¹⁰ "I know in many of the undue hardship cases the courts have structured a remedy where the debtor would pay back half of the amount or pay back two-thirds of the amount with interest or without interest. So, under §523(a)(8) this has been done. I think I can do it as a court of equity." *Transcript* at 38.

student loan. The only difference is the **standard** by which dischargability is determined; (i.e. non-HEAL loans only have to meet the "undue hardship" standard while HEAL loans must meet the more stringent standard of "unconscionability.")

In non-HEAL loan situations, a **finding** of undue hardship is not required before the court can reduce the amount owed or **revise** the payment schedule. *In Re Albert* at 102.

Therefore, a finding of unconscionability should not be required before the court can reduce the amount of the debt or revise a payment schedule on a HEAL loan. Thus, the Bankruptcy Court does not have to make a finding of unconscionability before it can deny post-petition interest and structure a payment schedule.

In the present case, there is no **evidence** that the debtors are living beyond their means. Still, evidence showed that the debtors are barely able to meet their monthly obligations. Therefore, it seems unlikely that the debtors would be able to pay off the entire HEAL loan in one lump sum. It seems clear then, that the government is going to have to collect the debt in some type of installments. The Bankruptcy Court recognized this practical reality and structured a plausible payment plan in light of the debtors' financial situation. Even at \$80 per month with no more interest accruing, the debtors will be paying on this debt for over thirteen years.

The disallowance of post-petition interest is in accordance with Chapter 7's "fresh start" policy. As the court in *Kuhns* found, the accrual of interest over a 10 - 15 year period interferes with the "new start" contemplated by the Chapter 7 Order for Relief. 33 B.R. at 762. "Certainly a discharge in bankruptcy and a "fresh start" does not contemplate perpetual indebtedness on student loans beyond a reasonable repayment period." *Id.* at

763. Thus, if interest were allowed to accrue in the present case, it would create a hardship for the debtors.¹¹

IV. Conclusion

For the above reasons, this Court affirms the Bankruptcy Court's finding of nondischargeability of debtor's HEAL loan. Furthermore, the disallowance of post-petition interest and the creation of a repayment plan are within the Bankruptcy Court's equitable powers and are in accordance with the "fresh start" of the Chapter 7 Order for Relief.

Therefore, the Bankruptcy Court's decision is AFFIRMED.

SO ORDERED THIS 23^d day of March, 1993.


~~THOMAS R. BRETT~~ JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

¹¹ Dr. David is already 50 years old. Payment of this loan at \$80 per month will take at least thirteen years. If interest were to keep accruing, it would be many more years, if ever, before this loan was paid off. Furthermore, the government is already entitled to interest that has exceeded the amount of the principal. Practically speaking, debtor could spend the rest of his life paying for this loan. That hardly coincides with the "fresh start" that Chapter 7 contemplated for debtors.

ENTERED ON DOCKET
DATE MAR 25 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DON W. GLIDEWELL,

Plaintiff,

vs.

CITGO PETROLEUM CORPORATION,

Defendant.

No. 91-C-753-C

FILED

MAR 25 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JUDGMENT

The above-captioned matter came before this Court for jury trial on March 2, 1993. Present were Don Glidwell, Plaintiff, and his attorney, Earl Wolfe, and Defendant, CITGO Petroleum Corporation, by and through their attorneys of record, Lynn Paul Mattson and Kristen L. Gordon. The jury was empaneled and sworn. It heard the evidence, the charges of the Court, and the argument of counsel and returned its verdict in favor of Defendant, CITGO Petroleum Corporation, finding that they owe Plaintiff nothing. Specifically, the jury found that the Plaintiff knew on September 15, 1989, that he was going to be separated from employment with CITGO Petroleum Corporation. Moreover, the jury further found in favor of Defendant and against Plaintiff on both the claim under the Age Discrimination in Employment Act and issued its general verdict for Defendant on the state law public policy tort.

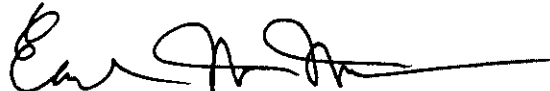
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff, Don Glidwell, take nothing by reason of his petition and that judgment be entered in favor of Defendant, CITGO Petroleum Corporation, on the claims.

DATED this 18 day of mar, 1993.

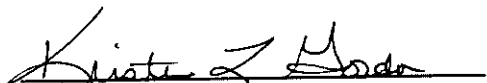
(Signed) H. Dale Cook

U.S. DISTRICT JUDGE

APPROVED AS TO FORM:



EARL WOLFE
110 South Hartford
Suite 123
Tulsa, OK 74120
Attorney for Plaintiff



KRISTEN L. GORDON
Doerner, Stuart, Saunders,
Daniel & Anderson
320 South Boston
Suite 500
Tulsa, OK 74103
Attorney for Defendants

MAR 24 1993

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MAR 24 1993

DONNA McFADDEN,

Plaintiff,

vs.

EDGAR BURNS and WILLBROS
BUTLER ENGINEERS, INC.,

Defendants.

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

No. 92-C-1098-B

ORDER

The Court has for decision the Defendants' Motion to Dismiss Plaintiff's claim of punitive damages and request for jury trial in Plaintiff's Count I claim under Title VII pursuant to the Civil Rights Act of 1991, Plaintiff's claim under Count III of her Complaint for alleged invasion of privacy, and under Count IV for alleged negligent infliction of emotional distress (Docket #2). Plaintiff's claim under Count II alleges intentional infliction of emotional distress and under Count V for the alleged pendent claim under Oklahoma law of wrongful termination.

For the reasons hereafter stated, Defendants' Motion to Dismiss is hereby SUSTAINED. Defendants contend that the Civil Rights Act of 1991 does not apply retroactively and therefore is not applicable to Plaintiff's claims. Herein, the actions alleged by Plaintiff occurred previous to November 21, 1991, the effective date of the Civil Rights Act of 1991. Therefore, any rights under the 1991 Civil Rights Act can only apply in this case, if the Act's provisions were intended to be applied retroactively.

On its face, the Civil Rights Act of 1991 is ambiguous as to whether it was intended to be applied retroactively or

prospectively. Vogel v. City of Cincinnati, 959 F.2d 594 (6th Cir. 1992), *cert. denied* 113 S.Ct. 86 (1992). The United States Supreme Court has issued two lines of authority on the issue of whether statutes should be applied retroactively when congressional intent is unclear. See, Bradley v. School Board of City of Richmond, 416 U.S. 696 (1974) (a court should apply the law in effect at the time it renders its decision unless retroactive application would result in manifest injustice) and Bowen v. Georgetown University Hospital, 488 U.S. 204 (1988) (retroactivity is not favored and thus congressional enactments will not be applied retroactively unless their language requires such).

The majority of courts, including this one, that have addressed this issue have followed Bowen and concluded that the Civil Rights Act of 1991 should not be applied retroactively. Vogel, 959 F.2d 594; Luddington v. Indiana Bell Telephone Co., 796 F.Supp. 1550 (S.D. Ind. 1990), *aff'd* 966 F.2d 225 (7th Cir. 1992); Moze v. American Commercial Marine Serv. Co., 963 F.2d 929 (7th Cir. 1992) *cert. denied* 113 S.Ct. 207 (1992); Johnson v. Uncle Ben's Inc., 965 F.2d 1363 (5th Cir. 1992) petition for *cert.* filed 61 U.S.L.W. 3356 (1992); Fray v. Omaha World Herald Co., 960 F.2d 1370 (8th Cir. 1992); Van Meter v. Barr, 803 F.Supp. 444 (D.D.C. 1992); Jackson v. Integra, Case No. 91-C-001-E (N.D. Okla. 1992); Jackson v. Readnour, Case No. 91-C-411-B (N.D. Okla. June 15, 1992); Horner v. Management and Training Corp. and Tulsa Job Corps, No. 91-C-835-B (N.D.Okla. June 15, 1992); Kendall v. Watkins, Case No. 91-C-292-

B (N.D.Okla. July 29, 1992) and Sowers v. Ram-Seco, Inc., Case No. 91-456-P (E.D. Okla. 1992); *but see*, Davis v. City and County of San Francisco, 976 F.2d 1536 (9th Cir. 1992) ("Guided by the plain language of the statute and this cardinal rule of interpretation, we conclude that Congress intended the courts to apply the Civil Rights Act of 1991 to cases pending at the time of its enactment and to pre-Act conduct still open to challenge after that time.") The Tenth Circuit Court of Appeals has not yet addressed the retroactive application of the Act.

The Equal Employment Opportunity Commission (EEOC) has also concluded that neither the language nor the legislative history of the Act provide a clear sense of Congress' intent on the subject of retroactivity. The EEOC has thus interpreted the Act to apply only to claims arising after the effective date of the Act. "Policy Guidance on Application of Damages Provisions of the Civil Rights Act of 1991 to Pending Charges and Pre-Act Conduct," EEOC Notice 915.002, *reprinted in* EEOC Compl.Man. ¶2096 (CCH) (Dec. 27, 1991).

This Court is not convinced by the Ninth Circuit's reasoning in Davis that the face of the 1991 Act clearly indicates an intent to make the Act retroactive. Therefore, this Court will maintain its stance with the majority of Circuit Courts that have addressed the issue and prohibit retroactive application of the 1991 Act. For these reasons, Plaintiff has failed to state a claim pursuant to the 1991 Civil Rights Act and Defendants' motion to dismiss as to this claim should be granted.

While Plaintiff is not entitled to a jury trial regarding the

Title VII claim, she is entitled to a jury trial as requested regarding her alleged wrongful termination claim under the authority of Burk v. K-Mart Corp., 770 P.2d 24 (Okla. 1989), and also punitive damages are recoverable under the Burk case.

The Plaintiff's claim for invasion of privacy in Count III fails to allege sufficient facts to support such a claim under Oklahoma law. Eddy v. Brown, 715 P.2d 74 (Okla. 1986), and Restatement (Second) of Torts) § 652A.

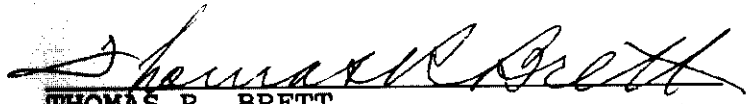
Further, Plaintiff's claim in Count IV for alleged negligent infliction of emotional distress fails because Oklahoma law has not recognized such a cause of action. Eddy, 715 P.2d 74. Oklahoma does recognize a cause of action for intentional infliction of emotional distress, as has been alleged herein in Count II, where the necessary facts support such a claim.

In conclusion, the Defendants' Motion to Dismiss Plaintiff's claim of alleged punitive damages and request for jury trial under Count I pursuant to the Civil Rights Act of 1991 (Docket #2) is SUSTAINED, as is Defendants' Motion to Dismiss Plaintiff's Counts III and IV, as aforesaid. The matter proceeds under Counts I, II, and V, pursuant to the following scheduling order:

April 26, 1993	Amend pleadings or add additional parties
June 21, 1993	Exchange the names and addresses of all witnesses, including experts, in writing, along with a brief statement regarding each witness' expected testimony (not necessary if witness' deposition taken)
July 19, 1993	Complete all discovery

July 26, 1993	Dispositive motions
August 9, 1993	Response to dispositive motions
August 16, 1993	Reply to dispositive motions
September 17, 1993 9 A.M.	Pretrial conference and hearing on dispositive motions
October 12, 1993	File agreed pretrial order
November 8, 1993	File suggested voir dire, suggested instructions and any trial brief a party wishes to file; suggested find- ings of fact and conclusions of law relative to the Title VII claim, and any motions in limine
November 15, 1993 9:30 A.M.	Jury trial

DATED this 24th day of March, 1993.


 THOMAS R. BRETT
 UNITED STATES DISTRICT JUDGE

MAR 24 1993

DATE

FILED

MAR 23 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

THE GARNEY COMPANIES, INC.,

Plaintiff,

vs.

CITY OF TULSA, et al.,

Defendants.

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Case No. 92 C 479 E

NOTICE OF DISMISSAL

Plaintiff Garney Companies, Inc., pursuant to Fed.R.Civ.P.
41(a)(1)(i), hereby dismisses its claims against defendant Mid-
Continent Concrete Company without prejudice in this action.

HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON

Ronald A. White

Ronald A. White, OBA #12037
400 Bank of Oklahoma Tower
One Williams Place
Tulsa, Oklahoma 74142-0141
Telephone: (918) 588-2700
Facsimile: (918) 588-2700

SEIGFREID, BINGHAM, LEVY,
SELZER & GEE, P.C.

By: *Duane J. Fox*

Duane J. Fox MO #26272
Lisa M. Ford MO #40041
2800 Commerce Tower
911 Main Street
Kansas City, Missouri 64105
Telephone: (816) 421-4460
Facsimile: (816) 474-3447

ATTORNEYS FOR PLAINTIFF
THE GARNEY COMPANIES, INC.

PLAINTIFF'S CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the above and foregoing Notice of Dismissal was mailed, postage prepaid, this 22 day of March, 1993, to:

James K. Secrest, II, Esq.
Bradley D. Tucker, Esq.
Secrest & Hill
7134 South Yale, Suite 900
Tulsa, Oklahoma 74136

Gerald R. Miller, Esq.
Jones & Miller
P. O. Box 2011
Muskogee, Oklahoma 74402

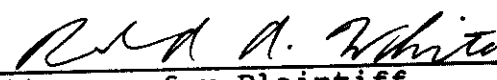
Thomas M. Ladner, Esq.
R. Jay Chandler, Esq.
Norman, Wohlgemuth & Thompson
2900 Mid-Continent Tower
Tulsa, Oklahoma 74103

Neal E. McNeill, Jr., Esq.
Larry V. Simmons, Esq.
Office of the City Attorney
200 Civic Center
Tulsa, Oklahoma

Harry M. Crowe, Jr. Esq.
Crawford, Crowe & Bainbridge
First Place, Suite 1714
Fifteen East Fifth Street
Tulsa, Oklahoma 74103-4365

Harry A. Parrish, Esq.
Knight, Wilkerson & Parrish
P. O. Box 1560
Tulsa, Oklahoma 64101-1560

Thomas F. Birmingham, Esq.
Birmingham, Morley,
Weatherford & Priore
1141 East 37th Street
Tulsa, Oklahoma 64105



Attorney for Plaintiff
The Garney Companies, Inc.

ENTERED ON DOCKET
DATE **MAR 24 1993**

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 22 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

THRIFTY RENT-A-CAR SYSTEM,
INC., an Oklahoma
corporation,

Plaintiff,

vs.

BROWN FLIGHT RENTAL ONE
CORP., a foreign corporation;
and RICHARD BROWN, an
individual,

Defendants,

Case No. 91-C-993-B ✓

ORDER AND JUDGMENT

On February 22, 1993, the Court entered its Order granting Thrifty Rent-a-Car System, Inc., and defendants on counterclaim, Pentastar Services Inc., Thomas Bonner, Scott Anderson, Fred Chesebro and Todd Hamilton, Summary Judgment on the three issues set forth in Defendants', Brown Flight Rental One Corp. and Richard Brown [collectively Brown Flight], counterclaims, (1) common law fraud, (2) violation of the New York franchise laws, and (3) breach of contract. These issues related to two areas of concern, the furnishing of an adequate supply of rental vehicles by Thrifty and the projected profitability of Defendants' new franchise.

Thereafter Defendants raised objections that the Court's Order "reache[d] only the fraud claims based on misrepresentation", arguing that their claims were also based upon omission, an issue

122

allegedly not addressed by the Order.

Defendants argued that **their** claim for alleged "breach of implied covenant of good faith and fair dealing as well as breach of the licensee agreement remain unresolved. Additionally, claims and issues related to misrepresentations and omissions after the license agreement was signed **also** appear unresolved." The Court determined these written statements to be related to the three counterclaim issues or to the **claim** for rescission of guaranty on the part of Richard Brown, individually, or both. The Court rejected Defendants' argument by written Order and the remaining issues were tried to a jury.

Immediately prior to trial the parties acceded to the Court's view that the rescission issue, sounding in equity, should properly be addressed by the Court without submission to a jury.

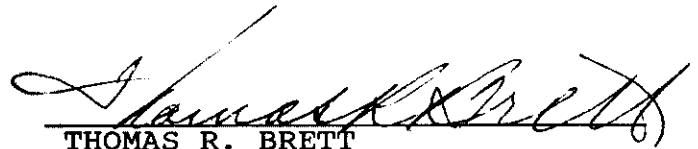
Thereafter the matter was tried to a jury who entered its verdict March 16, 1993, in favor of Plaintiff and against Defendants on the issues of **breach** of contract and conversion, and in favor of Defendants and **against** Plaintiff on the punitive damages interrogatories.

Following consideration of the evidence, the Court finds the parties entered into and **executed** the subject License Agreement, the initial Master Lease Agreement, the Promissory Note, and the personal guaranty (by Richard Brown, only) in December, 1990, and the subsequent Master Lease **Agreements** in July and October, 1991. Further the Court finds the **parties** performed under the agreements until Defendants' default in December, 1991, and that Plaintiff's

conduct did not support a basis for rescission nor did Defendant Richard Brown timely seek to rescind.

The Court concludes Richard Brown's claim for rescission should be and the same is hereby denied and Plaintiff is granted Judgment thereon.

ORDERED AND ENTERED this 27th day of March, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED
MAR 24 1993
FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MAR 23 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

DONALD RAY McCLELLAN,

Plaintiff,

v.

BRAY PAYAS and KEVIN SMITH,

Defendants.

92-C-383-E ✓

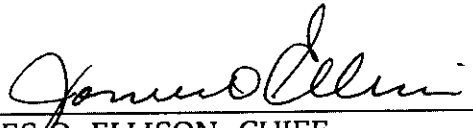
ORDER

The court has for consideration **the Report** and Recommendation of the Magistrate Judge filed February 24, 1993, in **which** the Magistrate Judge recommended that defendants' Motion to Dismiss be **granted**. No exceptions or objections have been filed and the time for filing such exceptions or **objections** has expired.

After careful consideration of **the record** and the issues, the court has concluded that the Report and Recommendation of the **Magistrate** Judge should be and hereby is affirmed.

It is therefore Ordered that **defendants'** Motion to Dismiss is granted and plaintiff's Civil Rights Complaint Pursuant to 42 U.S.C. § 1983 is dismissed.

Dated this 23rd day of March, 1993.


JAMES O. ELLISON, CHIEF
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET
DATE MAR 24 1993

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

VALLEY FORGE INSURANCE
COMPANY, and LUTHERAN
BENEVOLENT INSURANCE
COMPANY,

Plaintiffs,

vs.

No. 92-C-1035E

LAURIE M., a minor, by and
through her parents, KRISTEN
M. and JOHN M.; KRISTEN M.
and JOHN M., individually;
ST. JOHN'S CATHOLIC SCHOOL;
CATHOLIC DIOCESE OF TULSA;
and ROGER GLENN LAWRENCE,

Defendants.

FILED

MAR 23 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

AGREED JUDGMENT

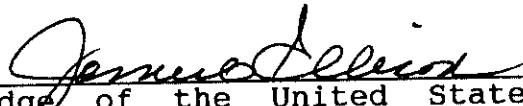
This matter comes on for hearing this 23^d day of March, 1993, and the Court being fully advised finds that Judgment should be entered for the Plaintiffs as against Defendants, Laurie M., a minor, by and through her parents, Kristen M. and John M.; Kristen M. and John M., Individually; St. John's Catholic School, and Catholic Diocese of Tulsa. The Court further finds that Default Judgment has previously been entered against Defendant Roger Glenn Lawrence in this matter.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment be entered in favor of Plaintiffs and against Defendants, Laurie M., a minor, by and through her parents, Kristen M. and John M.; Kristen M. and John M., Individually; St. John's Catholic School, and Catholic Diocese of Tulsa; that the relief requested in

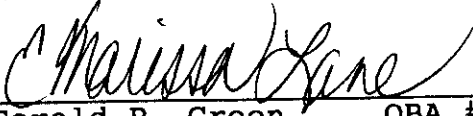
Plaintiffs' Complaint is hereby granted; that Plaintiffs, Valley Forge Insurance Company and Lutheran Benevolent Insurance Company owe no duty to indemnify or defend Roger Glenn Lawrence for the acts, damages or claims alleged in Civil Action No. CJ-91-1689 styled Laurie M., a minor, by and through her parents, Kristen M. and John M.; Kristen M. and John M., individually; v. St. John's Catholic School, Catholic Diocese of Tulsa, Roger Glenn Lawrence, Individually and as agent of St. John's Catholic School and Catholic Diocese of Tulsa, or for any acts, omissions or damages arising out of the incidents giving rise to said lawsuit.

IT IS FURTHER ORDERED that this Judgment is without prejudice to and does not adjudicate the rights or obligations of the Plaintiff to any party to these proceedings except as specifically adjudicated with respect to the Defendant Roger Glenn Lawrence.

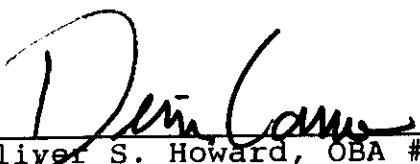
Judgment rendered this 28th day of March, 1993.


Judge of the United States
District Court for the Northern
District of Oklahoma

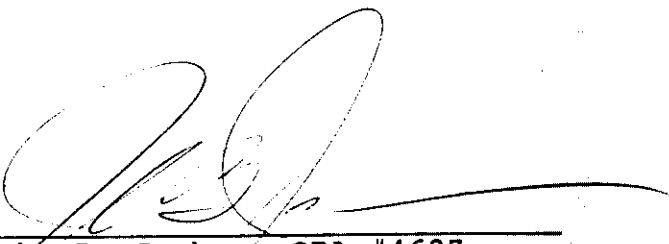
APPROVED:


Gerald P. Green, OBA #003563
E. Marissa Lane, OBA #013314
PIERCE COUCH HENDRICKSON
BAYSINGER & GREEN
P.O. Box 26350
Oklahoma City, Oklahoma 73126
405/235-1611

ATTORNEYS FOR PLAINTIFFS, VALLEY FORGE
INSURANCE COMPANY and LUTHERAN BENEVOLENT
INSURANCE COMPANY


Oliver S. Howard, OBA #4403
James M. Sturdivant, OBA #8723
Dennis C. Cameron, OBA #2236
GABLE & GOTWALS
2000 Fourth National Bank Bldg.
15 West 6th Street
Tulsa, Oklahoma 74119-5447

ATTORNEYS FOR DEFENDANTS LAURIE M.,
KRISTEN AND JOHN M.



John B. Jarboe, OBA #4627
M. Shawn Lawhorn, OBA #13107
JARBOE & STOERMER, P.C.
401 South Boston, 18th Floor
Mid Continent Tower, Suite 1810
Tulsa, Oklahoma 74103-4018

ATTORNEYS FOR DEFENDANTS, ST.
JOHNS CATHOLIC SCHOOL and
CATHOLIC DIOCESE OF TULSA, OK

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

VALLEY FORGE INSURANCE
COMPANY, and LUTHERAN
BENEVOLENT INSURANCE
COMPANY,

Plaintiffs,

vs.

LAURIE M., a minor, by and
through her parents, KRISTEN
M. and JOHN M.; KRISTEN M.
and JOHN M., individually;
ST. JOHN'S CATHOLIC SCHOOL;
CATHOLIC DIOCESE OF TULSA;
and ROGER GLENN LAWRENCE,

Defendants.

ENTERED ON DOCKET
MAR 24 1993
DATE

No. 92-C-1035E

FILED

MAR 23 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

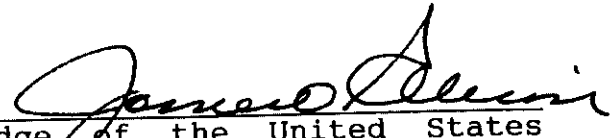
JUDGMENT

This matter comes on for hearing this 23^d day of March, 1993, upon Application and Affidavit of the Plaintiffs Valley Forge Insurance Company and Lutheran Benevolent Insurance Company ("Plaintiffs") duly made judgment by default. It appears that the Defendant Roger Glenn Lawrence herein is in default and that the Clerk of the United States District Court for the Northern District of Oklahoma has previously searched the records and entered the default of the Defendant Roger Glenn Lawrence. It further appears upon Plaintiffs' Affidavit that Defendant is not an infant or incompetent person, and is not in the military service of the United States. The Court being fully advised finds that judgment should be entered for the Plaintiffs as against Defendant, Roger Glenn Lawrence.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment be entered in favor of Plaintiffs and against Defendant, Roger Glenn Lawrence; that the relief requested in Plaintiffs' Complaint is hereby granted; that Plaintiffs, Valley Forge Insurance Company and Lutheran Benevolent Insurance Company have no duty under the contracts of insurance issued by the Plaintiffs to defend or indemnify Defendant Roger Glenn Lawrence for the acts, claims and damages set forth in Civil Action No. CJ-91-1689 styled Laurie M., a minor, by and through her parents, Kristen M. and John M.; Kristen M. and John M., individually; v. St. John's Catholic School, Catholic Diocese of Tulsa, Roger Glenn Lawrence, Individually and as agent of St. John's Catholic School and Catholic Diocese of Tulsa or for any claims or damages arising out of the incidents giving rise to said civil action.

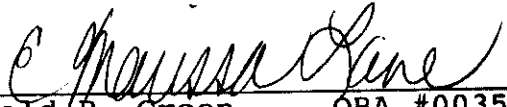
IT IS FURTHER ORDERED that this Judgment is without prejudice to and does not adjudicate the rights or obligations of the Plaintiff to any party to these proceedings except as specifically adjudicated with respect to the Defendant Roger Glenn Lawrence.

Judgment rendered this 23rd day of March, 1993.




Judge of the United States
District Court for the Northern
District of Oklahoma

APPROVED:

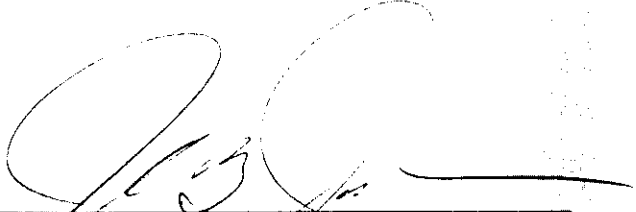

Gerald P. Green, OBA #003563
E. Marissa Lane, OBA #013314
PIERCE COUCH HENDRICKSON
BAYSINGER & GREEN
P.O. Box 26350
Oklahoma City, Oklahoma 73126
405/235-1611

ATTORNEYS FOR PLAINTIFFS, VALLEY FORGE
INSURANCE COMPANY and LUTHERAN BENEVOLENT
INSURANCE COMPANY



Oliver S. Howard, OBA #4403
James M. Sturdivant, OBA #8723
Dennis C. Cameron, OBA #2236
GABLE & GOTWALS
2000 Fourth National Bank Bldg.
15 West 6th Street
Tulsa, Oklahoma 74119-5447

ATTORNEYS FOR DEFENDANTS LAURIE M.,
KRISTEN AND JOHN M.



John B. Jarboe, OBA #4627
M. Shawn Lawhorn, OBA #13107
JARBOE & STOERMER, P.C.
401 South Boston, 18th Floor
Mid Continent Tower, Suite 1810
Tulsa, Oklahoma 74103-4018

ATTORNEYS FOR DEFENDANTS, ST.
JOHNS CATHOLIC SCHOOL and
CATHOLIC DIOCESE OF TULSA, OK

ENTERED ON DOCKET
MAR 24 1993

FILED

MAR 23 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

SCOTT P. KIRTLEY,
Plaintiff,
vs.
JOHNNY LEE SPENCER,
Defendant.

Case No. 91-C-498

ORDER

Before the Court for consideration are the Defendant's Notice of Appeal from Bankruptcy Court (Docket #1) and Motion For Leave to Appeal Under 28 U.S.C. §158(a) (Docket #2), filed July 12, 1991.

In a related case involving the same Defendant/Debtor, this Court entered an Order denying Defendant's motion for leave to appeal. Spencer v. Spencer, Case No. 91-C-499-E (Order of Oct. 16, 1991). A minute order was entered in the instant case on December 6, 1991, instructing the parties to advise the Court no later than December 18, 1991, if the motion in this case was identical to the motion ruled on in 91-C-499-E. The parties failed to so advise.

The Court concludes its Order of October 16, 1991, in case 91-C-499-E, is equally applicable to the instant case and therefore based on the authority cited therein, the Defendant's motion for leave to appeal (Docket #2) in the instant case should be DENIED.

IT IS SO ORDERED THIS 23rd DAY OF MARCH, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE **MAR 24 1993**

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

AARON BURROWS,

PLAINTIFF,

VS.

THE CITY OF TULSA, OKLAHOMA,
AND P.W. CALHOUN,

DEFENDANTS.

CASE NO. 91-C-950-B

FILED

MAR 19 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER AND JUDGMENT

This case came on for jury trial on March 17, 1993. Following selection of a jury and presentation of the evidence, each party rested. Defendants moved for Judgment As A Matter Of Law at the conclusion of the evidence which was overruled by the Court. Following instruction by the Court on the law, the jury retired to deliberate and, after approximately nine hours of deliberation, announced to the Court on March 19, 1993, they were unable to reach a unanimous verdict. The Court then declared a mistrial and dismissed the jury.

Thereafter, the Court reconsidered Defendants' Motion For Judgment As A Matter Of Law and concluded Judgment should be entered in favor of Defendants and against Plaintiff on all claims for the reasons stated and legal authorities cited in open court on this date.

THEREFORE IT IS ORDERED AND ADJUDGED that Judgment is herewith entered in favor of Defendants City of Tulsa and P.W. Calhoun and against the Plaintiff, Aaron Burrows, on all claims, and Plaintiff's action is dismissed. At the

conclusion of Plaintiff's evidence the action was dismissed against the Defendant D.H. Burr for want of sufficient evidence. Costs are assessed against Plaintiff if timely applied for under Local Rule 6 and each party is to bear their own attorneys fees.

IT IS SO ORDERED this 19th day of March, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 23 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

MARY L. McCULLY,

Plaintiff

vs.

DONNA E. SHALALA,
SECRETARY OF HEALTH
AND HUMAN SERVICES,

Defendant

CIVIL ACTION NO. 91-C-830-E

EOD 3/24/93

ORDER

Pursuant to plaintiff's application for attorney under the EAJA, 28 U.S.C. §2412(d), timely filed on March 5, 1993, the parties have stipulated that an award in the amount of \$3,656.25 (48.75 hours at \$75.00 per hour) for attorney fees is appropriate.

WHEREFORE, IT IS ORDERED that plaintiff be awarded attorney's fees and expenses under the Equal Access To Justice Act in the amount of \$3,656.25.

It is so ORDERED THIS 23 day of March, 1993.

ST. JAMES CLERK

ENTERED ON DOCKET

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MAR 24 1993
FILED

MAR 23 1993

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

NORTH AMERICAN CREDIT
CONSULTANTS, INC.,

Plaintiff,

vs.

Case No. 92-C-214-B

WILLIAM BOYD SMITH dba
Real Estate Consultants dba
Tri-Angle Development Co. dba
Manufacturing American Steel,


Defendant.

ADMINISTRATIVE CLOSING ORDER

The Parties having entered into a settlement agreement, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

IF, by 10-31-93, the Parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 23rd day of March, 1993.


UNITED STATES DISTRICT JUDGE
THOMAS R. BRETT

ENTERED ON DOCKET

DATE MAR 24 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 22 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

RICHARD T. SONBERG,

Plaintiff,

vs.

CHANGING, INC., a
corporation d/b/a
Consignment Assets
Liquidation Center of
America, Inc., Tim
Studebaker, Russ Smith,
Jerry Meek, Auto Trade
Center, Inc. and Albright
Title & Trust Company,

Defendants.

No. 92-C-994 B

ORDER OF DISMISSAL WITH PREJUDICE

NOW, on this 22nd day of Mar, 1993, there comes before the Court the Joint Application for Dismissal With Prejudice presented by the plaintiff and the defendants, Eddie Hicks and Jerry Meek and Albright Title & Trust Company, wherein the plaintiff and said defendants stipulate that the complaint should be dismissed as to such defendants.

The Court finds that a dismissal of said defendants under Rule 41 of the Federal Rules of Civil Procedure is proper pursuant to the stipulation of these parties. It is therefore ORDERED that the plaintiff's complaint is hereby dismissed, with prejudice, as to the defendants, Eddie Hicks, Jerry Meek and Albright Title & Trust

25

~~Attorney for Jerry Meek, and
Eddie Hicks~~

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE **MAR 23 1993**

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ROBERT E. WHITE; REBECCA J.
WHITE; COUNTY TREASURER, Osage
County, Oklahoma; and BOARD OF
COUNTY COMMISSIONERS, Osage
County, Oklahoma,

Defendants.

FILED

MAR 23 1993

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION NO. 92-C-734-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 22nd day
of March, 1993. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Peter Bernhardt, Assistant United States
Attorney; the Defendants, County Treasurer, Osage County,
Oklahoma, and Board of County Commissioners, Osage County,
Oklahoma, appear by John S. Boggs, Jr., Assistant District
Attorney, Osage County, Oklahoma; and the Defendants, Robert E.
White and Rebecca J. White, appear not, but make default.

The Court being fully advised and having examined the
court file finds that the Defendants, Robert E. White and
Rebecca J. White, acknowledged receipt of Summons and Complaint
on September 3, 1992; that Defendant, County Treasurer, Osage
County, Oklahoma, acknowledged receipt of Summons and Complaint
on August 26, 1992; and that Defendant, Board of County
Commissioners, Osage County, Oklahoma, acknowledged receipt of
Summons and Complaint on August 26, 1992.

It appears that the Defendants, County Treasurer, Osage County, Oklahoma, and Board of County Commissioners, Osage County, Oklahoma, filed their Answer on August 27, 1992; that the Defendants, Robert E. White and Rebecca J. White, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon promissory notes, assumption agreement, and shared appreciation agreement and for foreclosure of mortgages securing said promissory notes and agreements upon the following described real property located in Osage County, Oklahoma, within the Northern Judicial District of Oklahoma:

S½ NE¼ and NE¼ NE¼ of Section 14, Township 23 North, Range 3 East, Osage County, Oklahoma.

Subject, however, to all valid outstanding easements, right-of-ways, mineral leases, mineral reservation, and mineral conveyances of record.

The Court further finds that on March 9, 1976, Robert E. White and Kathleen M. White executed and delivered to the United States of America, acting through the Farmers Home Administration, their promissory note in the amount of \$45,500.00, payable in yearly installments, with interest thereon at the rate of 5 percent per annum.

The Court further finds that as security for the payment of the above-described note, Robert E. White and Kathleen M. White executed and delivered to the United States of America, acting through the Farmers Home Administration, a real estate mortgage dated March 9, 1976, covering the above-described

property, situated in the State of Oklahoma, Osage County. Said mortgage was recorded on March 9, 1976, in Book 460, Page 182, in the records of Osage County, Oklahoma.

The Court further finds that on August 25, 1980, the Farmers Home Administration released Kathleen M. White from personal liability to the Government for her indebtedness and obligations evidenced by or incurred under the terms of the above-described note and mortgage.

The Court further finds that on August 25, 1980, Defendants, Robert E. White and Rebecca J. White, executed and delivered to the United States of America, acting through the Farmers Home Administration, an Assumption Agreement in the amount of \$42,819.06, payable in yearly installments, with interest thereon at the rate of 5 percent per annum.

The Court further finds that as security for the payment of the above-described assumption agreement, the Defendants, Robert E. White and Rebecca J. White, executed and delivered to the United States of America, acting through the Farmers Home Administration, a real estate mortgage dated August 25, 1980, covering the above described property, situated in the State of Oklahoma, Osage County. This mortgage was recorded on August 25, 1980, in Book 585, Page 729 in the records of Osage County, Oklahoma.

The Court further finds that the Defendants, Robert E. White and Rebecca J. White, executed and delivered to the United

States of America, acting through the Farmers Home Administration, the following promissory notes:

<u>Loan Number</u>	<u>Original Amount</u>	<u>Date</u>	<u>Interest Rate</u>
41-06	\$45,392.83	12/19/84	5.00%
	54,454.90	04/18/89	5.00%
29-08	9,500.00	10/10/80	11.00%
	12,794.34	12/19/84	10.75%
	11,968.31	04/18/89	9.75%
	8,600.00	10/29/81	13.75%
29-10	10,475.02	12/19/84	10.75%
	14,960.60	04/18/89	9.75%

The Court further finds that as security for the payment of the above-described notes, Defendants, Robert E. White and Rebecca J. White, executed and delivered to the United States of America, acting through the Farmers Home Administration, the following described real estate mortgages:

<u>Instrument</u>	<u>Dated</u>	<u>Filed</u>	<u>County</u>	<u>Book</u>	<u>Page</u>
Mortgage	10/10/80	10/10/80	Osage	587	933
Mortgage	10/29/81	10/29/81	Osage	606	740

These mortgages cover the above-described property, situated in the State of Oklahoma, Osage County.

The Court further finds that on April 18, 1989, the Defendants, Robert E. White and Rebecca J. White, executed and delivered to the United States of America, acting through the Farmers Home Administration, a Shared Appreciation Agreement.

The Court further finds that as security for the payment of the above-described Shared Appreciation Agreement, the Defendants, Robert E. White and Rebecca J. White, executed and delivered to the United States of America, acting through the

Farmers Home Administration, a real estate mortgage dated April 26, 1990, covering the above-described property, situated in the State of Oklahoma, Osage County. This mortgage was recorded on April 26, 1990, in Book 771, Page 848, in the records of Osage County, Oklahoma.

The Court further finds that the Defendants, Robert E. White and Rebecca J. White, made default under the terms of the aforesaid notes, mortgages, assumption agreement and shared appreciation agreement, by reason of their failure to make the yearly installments due thereon, which default has continued, and that by reason thereof the Defendants, Robert E. White and Rebecca J. White, are indebted to the Plaintiff in the principal sum of \$81,383.81, plus accrued interest in the amount of \$8,376.08 as of April 12, 1992, plus interest accruing thereafter at the rate of \$14.6529 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$8.00 for recording Notice of Lis Pendens.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Osage County, Oklahoma, have a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the total amount of \$202.89, plus penalties and interest, for the year 1992. Said lien is superior to the interest of the Plaintiff, United States of America.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Robert E. White and Rebecca J. White, in the principal sum of \$81,383.81, plus accrued interest in the amount of \$8,376.08 as of April 12, 1992, plus interest accruing thereafter at the rate of \$14.6529 per day until judgment, plus interest thereafter at the current legal rate of 3.21 percent per annum until paid, plus the costs of this action in the amount of \$8.00 for recording Notice of Lis Pendens, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Osage County, Oklahoma, have and recover judgment in the amount of \$202.89, plus penalties and interest, for ad valorem taxes for the year 1992, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Robert E. White and Rebecca J. White, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of Defendant, County Treasurer and Board of County Commissioners, Osage County, Oklahoma, in the amount of \$202.89, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

Third:

In payment of the judgment rendered herein in favor of the Plaintiff.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

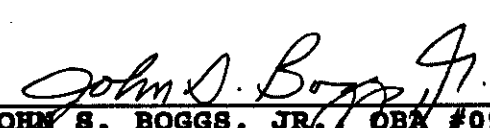

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney



PETER BERNHARDT, OBA #741
Assistant United States Attorney
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463



JOHN S. BOGGS, JR. OBA #0920
Assistant District Attorney
Osage County Courthouse
Pawhuska, Oklahoma 74056
(918) 287-1510
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Osage County, Oklahoma

Judgment of Foreclosure
Civil Action No. 92-C-734-E

PB/css

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 23 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ERIC W. TAYLOR,

Plaintiff,

v.

Case No. 91-C-760-E

NEW ORLEANS VEDIC SOCIETY,
INC., and/or NEW ORLEANS
VEDIC SOCIETY, INC., d/b/a
TOUCHSTONE DESIGN and/or
TOUCHSTONE DESIGN and
VINCENT TOSH, and
MID-CENTURY INSURANCE COMPANY,

Defendants.

ENTERED ON DOCKET
DATE MAR 23 1993

ORDER OF DISMISSAL

Pursuant to the Stipulation of Dismissal With Prejudice filed herein, IT IS ORDERED that all claims asserted by Plaintiff, Eric W. Taylor, or Defendant, New Orleans Vedic Society, Inc., sometimes also known as Touchstone Design, or Defendant, Vincent Tosh, or Defendant, Mid-Century Insurance Company, or John Kaufman, against the other in this action are dismissed with prejudice. Each party shall bear their own attorney fees and costs.

DATED March 23, 1993.


UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 23 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. 91-C-466-E

EDWARD D. MILES,

Defendant.

ENTERED ON DOCKET
DATE **MAR 23 1993**

ORDER AND JUDGMENT

COMES NOW before the Court the Motion for Summary Judgment of Plaintiff, the United States of America, filed the 13th day of February, 1992.

Although the relief contemplated by Federal Rule of Civil Procedure 56 is drastic and should be applied with caution so that litigants will have an opportunity for trial on bona fide factual disputes¹, summary judgment shall be rendered if the pleadings and other documents on file with the Court show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In a case such as this, where Defendant has utterly failed to submit any evidence to the Court to contradict the allegations of the Plaintiff, the last two sentences of subsection (e) of Fed.R.Civ.Proc. 56 must be considered:

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the

¹ Redhouse v. Quality Ford Sales, Inc., 511 F.2d 230, 234 (10th Cir. 1975); Jones v. Nelson, 484 F.2d 1165, 1168 (10th Cir. 1973); Machinery Center, Inc. v. Anchor National Life Insurance Co., 434 F.2d 1, 6 (10th Cir. 1970).

mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or otherwise as provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

The Advisory Committee Notes concerning that subsection, and following that rule, provide the following reasons for the addition of the above two sentences:

The last two sentences are added to overcome a line of cases, chiefly in the Third Circuit, which has impaired the utility of the summary judgment device. A typical case is as follows: A party supports his motion for summary judgment by affidavits or other evidentiary matter sufficient to show that there is no genuine issue as to a material fact. The adverse party, in opposing the motion, does not produce any evidentiary matter, or produces some, but not enough to establish that there is a genuine issue for trial. Instead, the adverse party rests on averments of his pleadings which on their face present an issue. In this situation, Third Circuit cases have taken the view that summary judgment must be denied, at least if the averments are "well-pleaded" and not suppositious, conclusory, or ultimate. [Citations to Third Circuit Cases omitted].

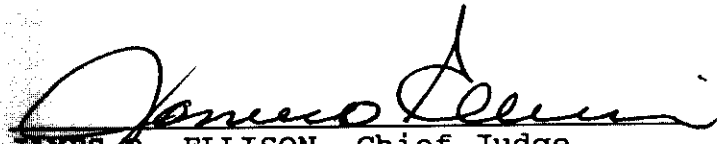
The very mission of the summary judgment procedure is to pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial. The Third Circuit doctrine, which permits the pleadings themselves to stand in the way of granting an otherwise justified summary judgment, is incompatible with the basic purpose of the rule. See 6 Moore's Federal Practice 2069 (2d ed. 1953); 3 Barron & Holtzoff, Federal Practice and Procedure 1235.1 (Wright ed. 1958).

It is hoped that the amendment will contribute to the more effective utilization of the salutary device of summary judgment.

The record establishes in this case that Defendant has submitted no evidence beyond his answer, filed July 15, 1991, and that Plaintiff has demonstrated beyond a reasonable doubt that no genuine issue as to any material fact remains.

The Court having reviewed the pleadings and filings in this action, finds that no material issues of fact exist to be litigated and that judgment should be entered as a matter of law in favor of the United States of America.

SO ORDERED, ADJUDGED AND DECREED this 22^d day of March, 1993.


JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 23 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

SOUTHPORT EXPLORATION
ASSOCIATES, INC., et al.,

Plaintiffs,

vs.

JEROME J. CONSER, et al.

Defendant.

No. 91-C-392-E

ENTERED ON DOCKET
MAR 23 1993
DATE

ADMINISTRATIVE CLOSING ORDER

The Defendant, Jerome J. Conser, has filed a petition in bankruptcy and these proceedings have been stayed thereby, and further, default judgment has been entered in favor of Plaintiff and against Defendants Geophysic International Corp. and Telluric Geophysical Services.

Accordingly, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

If, within thirty (30) days of a final adjudication of the bankruptcy proceedings the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

ORDERED this 22nd day of March, 1993.

15

A handwritten signature in cursive script, appearing to read "James O. Ellison", written in dark ink.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 23 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

MICHAEL PUGLIESE, et al.,

Plaintiffs,

vs.

No. 91-C-245-E

SEVITSKI & ASSOCIATES, INC.,
et al.,

Defendants.

ENTERED ON DOCKET
DATE **MAR 23 1993**

ORDER

COMES NOW BEFORE THE COURT FOR CONSIDERATION the following two items: (1) the Motion of Defendant Tallgrass Petroleum seeking dismissal for lack of prosecution (docket #37), and (2) the Application for Attorney's Fees of John J. Harris (docket #16). The Court will address each in chronological order of their filing herein.

Defendant Tallgrass Petroleum seeks dismissal of this action for lack of prosecution. Defendant correctly states in his application that at the status conference held before Magistrate John Leo Wagner on the 6th day of March, 1992, Plaintiff was informed that this action would be dismissed against Tallgrass Petroleum and Mik Chester unless Plaintiff informed the Court by the 9th day of March, 1992 of intent to prosecute. Plaintiff has never so informed the Court. Dismissal for failure to prosecute is therefore appropriate at this late juncture.

On August 2nd, 1991, default judgment was entered in favor of Plaintiffs against defendants Sevitsky & Associates, Inc., Sevitsky & Associates, Ltd., Welcome Oil Corp., and Charles Dugger.

43

Plaintiffs timely filed an application for recovery of attorney's fees in connection therewith, which was subsequently supplemented by an itemized accounting and affidavit, upon Order of this Court.

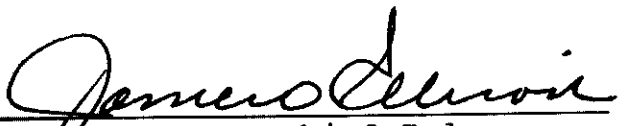
The Court now finds that Plaintiff's affidavit in support of the application for award of attorney's fees is sufficient to satisfy the standards set forth in Ramos v. Lamm, 713 F.2d 546 (10th Cir. 1983), and that a hearing on the award of attorney's fees is not necessary. The Court finds that Plaintiff's application for award of attorney's fees, in the amount of \$20,780.42 should be granted.

IT IS THEREFORE ORDERED that Defendant Tallgrass Petroleum's motion for dismissal for failure to prosecute (docket #37) is hereby granted.

IT IS FURTHER ORDERED that this action is further dismissed as it pertains to Defendant Mik Chester, unless and until Plaintiff notifies this Court within 15 days of receipt of this Order of an intent to prosecute.

IT IS FINALLY ORDERED that Plaintiff's application for award of attorney's fees (docket #16, #38) in the amount of \$20,780.42 is hereby granted.

ORDERED this 22^d day of March, 1993.


JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET

DATE 3-23-93

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 22 1993

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

CHADWICK R. RICHARDSON,

Plaintiff,

vs.

Case no. 92-C-443-B

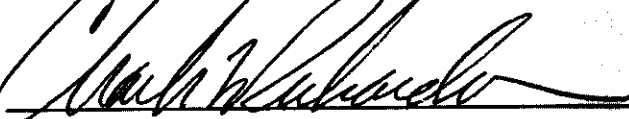
CITY OF TULSA,
CITY OF TULSA POLICE DEPT.,
and OFFICER JACK L. PIKE,

Defendants.

STIPULATION OF DISMISSAL WITH PREJUDICE

COME NOW the above-named parties by their attorneys of record, RICHARDSON & STOOPS by Charles L. Richardson for the Plaintiff, and the CITY ATTORNEY'S OFFICE by Larry V. Simmons for each Defendant, and hereby agree that the captioned cause should be dismissed with prejudice. Each party further agrees that all claims or potential claims arising from the events surrounding this lawsuit or litigation shall be forever barred.

APPROVED AS TO FORM AND CONTENT:



Charles L. Richardson, Esq.
For the Plaintiff




Larry V. Simmons, Esq.
For the Defendants

Respectfully submitted,

RICHARDSON & STOOPS

By



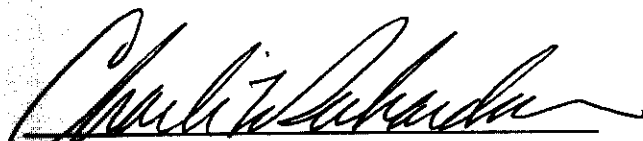
Gary L. Richardson, OBA # 7547
Charles L. Richardson, OBA # 13388
6846 S. Canton, Suite 200
Tulsa, Oklahoma 74136
Telephone (918) 492-7674
In Okla. (800) 456-2825
Facsimile (918) 493-1925

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF MAILING

I, Charles L. Richardson, attorney, do hereby certify that a true and exact copy of the above and foregoing Stipulation of Dismissal with Prejudice, was mailed by me through First Class U.S. Mails, with postage fully prepaid thereon, to the below listed individual at the address that follows, the 18th day of March, 1993.

Larry V. Simmons
Assistant City Attorney
200 Civic Center, Room 316
Tulsa, OK 74103


Charles L. Richardson

cdc\lt.3\richardson.p02

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE MAR 22 1993

JAMES E. DYKE,
Petitioner,
vs.
RON CHAMPION,
Respondent.

No. 91-C-600-E

FILED

MAR 22 1993

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

The Court has for consideration the Report and Recommendation of the Magistrate filed the 6th day of August, 1992 (docket #9). After careful consideration of the record and the issues, including the briefs filed herein by the parties, the Court has concluded that the Report and Recommendation of the Magistrate should be and hereby is affirmed and adopted by the Court.

IT IS THEREFORE ORDERED that the petition of James E. Dyke for issuance of a writ of habeus corpus is hereby denied.

ORDERED this 22^d day of March, 1993.


CHIEF JUDGE JAMES O. ELLISON
UNITED STATES DISTRICT COURT

13

DATE MAR 22 1993IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**FILED**

MAR 19 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Case No. 92-C-1030

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SAMSON RESOURCES COMPANY,

Defendant.

J U D G M E N T

In accord with the Order filed this date sustaining the Plaintiff's Motion for Summary Judgment, the Court hereby enters judgment in favor of the Plaintiff, United States of America, and against the Defendant, Samson Resources Company. The Defendant is ordered to comply in full with the subpoena issued by the Plaintiff on March 17, 1992, and served on the Defendant on March 19, 1992. Costs are hereby assessed against the Defendant if timely applied for pursuant to Local Rule 6, and the parties are directed to pay their own respective attorneys fees.

DATED this 18th day of March, 1993.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

DATE MAR 22 1993IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**FILED**

MAR 19 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SAMSON RESOURCES COMPANY,

Defendant.

Case No. 92-C-1030 ✓

ORDER

Before the Court for consideration are the Plaintiff's Motion for Summary Judgment (Docket #3) the Defendant's Cross Motion for Summary Judgment (Docket #5) and the Defendant's request for leave to file a reply brief (Docket #8). The Court concludes a reply brief is not necessary.

Plaintiff filed this action November 10, 1992, to enforce an administrative subpoena issued by the Minerals Management Service ("MMS") of the Department of the Interior ("DOI"). The subpoena in dispute orders the Defendant, Samson Resources Company ("Samson"), to produce copies of all contract settlement agreements affecting any federal or Indian leases entered into since July 1, 1985. Samson admits it has refused to comply with the subpoena.

The following is undisputed by the parties:

1. The MMS is the administrative agency responsible for collecting, accounting for, and dispersing royalty and other revenues from oil and gas leases on Federal public domain and acquired lands, Indian tribal and allotted lands, and the Outer Continental Shelf.

2. Samson is a lessee or operator and royalty payor under various Federal oil and gas leases.

3. The MMS has the responsibility to enforce the applicable statutes, regulations, and lease terms which govern the lessee's liability for royalties and other payments due under the leases.

4. The Federal Oil and Gas Royalty Management Act ("FOGRMA") gives the MMS the authority to conduct audits of current and past lease accounts and take appropriate actions to make additional collections or refunds as warranted. FOGRMA §101(c), 30 U.S.C. §1711(c).

5. FOGRMA requires all lessees to retain complete records necessary to demonstrate that payments of royalties are in compliance with lease terms, regulations and orders. FOGRMA further requires that such records be available for inspection by DOI employees. 30 C.F.R. §212.51.

6. The Tulsa suboffice of the Dallas Area Compliance Office ("DACO") of MMS' Royalty Compliance Division is conducting an audit of Samson's royalty payments under all of its leases for the period July 1, 1985, through June 30, 1990.

7. In connection with such an audit, FOGRMA authorizes the Secretary of the DOI to require by subpoena the production of all books, papers, production and financial records, documents, matter, and materials, as the Secretary may request. FOGRMA §107, 30 U.S.C. §1717.

8. The MMS issued a subpoena to Samson which required Samson to produce copies of all contract settlement agreements entered

into since July 1, 1985, affecting any Federal or Indian leases.

9. Samson has refused to comply with the subpoena to the extent it requires disclosure of take-or-pay contract settlements.

The Standard of Fed.R.Civ.P. 56
Motion for Summary Judgment

Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986); Windon Third Oil & Gas v. FDIC, 805 F.2d 342 (10th Cir. 1986). In Celotex, 477 U.S. at 317 (1986), it is stated:

"The plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."

To survive a motion for summary judgment, nonmovant "must establish that there is a genuine issue of material facts..." Nonmovant "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita v. Zenith, 475 U.S. 574, 585 (1986). The evidence and inferences therefrom must be viewed in a light most favorable to the nonmoving party. Conaway v. Smith, 853 F.2d 789, 792 n. 4 (10th Cir. 1988). Unless the Defendants can demonstrate their entitlement beyond a reasonable doubt, summary judgment must be denied. Norton v. Liddel, 620 F.2d 1375, 1381 (10th Cir. 1980).

A recent Tenth Circuit Court of Appeals decision in Committee

for the First Amendment v. Campbell, 962 F.2d 1517 (10th Cir. 1992), concerning summary judgment states:

"Summary judgment is appropriate if 'there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law.' . . . Factual disputes about immaterial matters are irrelevant to a summary judgment determination. . . We view the evidence in a light most favorable to the nonmovant; however, it is not enough that the nonmovant's evidence be 'merely colorable' or anything short of 'significantly probative.' . . .

"A movant is not required to provide evidence negating an opponent's claim. . . . Rather, the burden is on the nonmovant, who 'must present affirmative evidence in order to defeat a properly supported motion for summary judgment.' . . . After the nonmovant has had a full opportunity to conduct discovery, this burden falls on the nonmovant even though the evidence probably is in possession of the movant. (citations omitted). *Id.* at 1521."

Legal Analysis and Conclusions:

Samson has provided two grounds for its refusal to comply with the MMS subpoena: (1) the subpoena violates the stay of an MMS order requiring Samson to recompute and pay royalties; and (2) the subpoena seeks to discover information regarding take-or-pay contract settlements which the MMS is not legally entitled to demand.

Samson's first basis for refusing to comply with the subpoena relates to an MMS Order dated November 7, 1991, which determined that Samson had failed to properly pay royalties on one particular federal oil and gas lease. The Order required Samson: (1) to identify all federal leases located in Oklahoma for which Samson is

a payor; (2) redetermine the royalty amount due on such leases for the audit period; and (3) pay any additional royalties due. Samson appealed this decision to the MMS Director, posted a bond and obtained a stay of the Order pending the administrative appeal. Samson contends that the subpoena at issue in the instant case seeks to discover the same information for which Samson has obtained the stay.

The Court concludes there is no merit to this argument. The MMS Order being appealed does not involve gas contract settlements and does not require the production of any documents. The Court finds no connection between the MMS Order that is the subject of Samson's administrative appeal and the subpoena the MMS seeks to enforce in this case.

Samson's second basis for refusing to comply with the subpoena is based on Diamond Shamrock Exploration Co. v. Hodel, 853 F.2d 1159 (5th Cir. 1988). In Diamond Shamrock, the 5th Circuit held that royalties are only due on gas actually produced and are not due on take-or-pay payments. Id. at 1165-68. Samson contends that because the MMS is not legally entitled to royalties on payments for take-or-pay obligations, the MMS is likewise not entitled to the production of settlement agreements involving such take-or-pay payments.¹ Samson believes that such agreements are irrelevant to the MMS's function of collecting royalties and therefore the

¹ Samson contends it has offered to produce documents regarding settlement agreements which did not pertain to take-or-pay obligations but that the MMS demanded production of all settlement agreements irrespective of any take-or-pay obligation.

subpoena power of the MMS should not extend to such documents.

The MMS does not dispute the royalty-free status of take-or-pay proceeds not affiliated with produced minerals. The MMS does contend however, that contract settlement agreements frequently include payments for other elements, such as reduction in purchase price or minimum take provisions, payment for unpaid purchase price elements (including various reimbursements), and other damage or contract disputes. The MMS claims it is entitled to review all settlement agreements entered into by Samson and make a determination on whether any royalty is owed relative thereto.

The crux of the dispute in this matter is whether Samson should be able to screen the settlement agreements requested by the MMS and only produce such agreements as Samson finds to be relevant or whether Samson must produce all settlement agreements and allow the MMS to determine which agreements contain provisions relevant to calculating royalties. The Court need not address in this action whether, or to what extent, various hypothetical provisions in such settlement agreements may create a royalty obligation.

Samson makes a valiant effort to demonstrate that the scope of the MMS's auditing powers is limited to the extent that the MMS is not entitled to the subject settlement agreements. However, the relevant statutes dictate otherwise. The Secretary is given very broad powers in conducting investigations and audits. The critical section of FOGRMA provides:

(a) In carrying out his duties under this Act the Secretary may conduct any investigation or other inquiry necessary and appropriate to carrying out his duties under this Act. In

connection with such hearings, inquiry, investigation, or audit, the Secretary is also authorized where reasonably necessary --

...

(3) to require by subpoena the attendance and testimony of witnesses and the production of all books, papers, production and financial records, documents, matter, and materials, as the Secretary may request.

(Emphasis added.)

30 U.S.C. §1717.

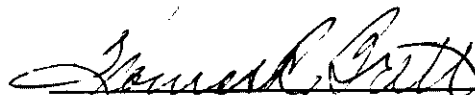
The MMS need only show that the settlement agreements are "reasonably necessary" to conduct the audit. It is certainly reasonable for the MMS to examine all payments received by a lessee to determine if such payments are in any way subject to a royalty obligation. In order for the MMS to make such a determination, it must know the terms of the agreement that produced the payment. Therefore, the production of all settlement agreements relating to Federal or Indian leases would clearly be reasonable and necessary in conducting an audit of such leases.

The Court concludes that the subpoena issued by the MMS in this case is valid and should be enforced. Samson is hereby ordered to immediately comply with the subpoena in full and produce all documents requested therein.

For the reasons set out above, Plaintiff's Motion for Summary Judgment (#3) should be and is hereby GRANTED and Defendant's Motion for Summary Judgment (#5) should be and is hereby DENIED. To the extent Defendant's "Objection to Plaintiff's Reply Memorandum" (#8) was intended to be a motion for leave to file a reply brief, it is hereby DENIED.

A judgment in accordance with this Order will be entered contemporaneously herewith.

IT IS SO ORDERED THIS 18th DAY OF MARCH, 1993.

A handwritten signature in cursive script, appearing to read "Thomas R. Brett", is written over a horizontal line.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE UNKNOWN HEIRS, EXECUTORS,
ADMINISTRATORS, DEVISEES,
TRUSTEES, SUCCESSORS AND ASSIGNS
OF LARRY M. GLIDEWELL a/k/a LARRY
MAC GLIDEWELL, Deceased;
TAMMY GLIDEWELL a/k/a TAMMY J.
GLIDEWELL a/k/a TAMMY J. PUTNAM;
CARL GLIDEWELL a/k/a CARL M.
GLIDEWELL a/k/a CARL MACK
GLIDEWELL, individually,
and as Administrator of the
estate of Larry M. Glidewell
a/k/a Larry Mac Glidewell,
Deceased; SUSAN MARIE KING,
Tenant; COUNTY TREASURER, Ottawa
County, Oklahoma; BOARD OF
COUNTY COMMISSIONERS, Ottawa
County, Oklahoma; JOSHUA
GLIDEWELL; BETTY L. GLIDEWELL;
STEVE GLIDEWELL; TERRI KESLER;
SHERRI MERRIWEATHER,

Defendants.

FILED

MAR 19 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

EOD 3/22/93

CIVIL ACTION NO. 91-C-312-C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 18 day
of March, 1993. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Phil Pinnell, Assistant United States Attorney;
the Defendant, Terri Kesler, appears through her attorney, Gary
L. Blume; the Defendants, County Treasurer, Ottawa County,
Oklahoma, and Board of County Commissioners, Ottawa County,
Oklahoma, appear not, having previously disclaimed any right,
title or interest in the subject property; the Defendant, Susan

NOTE: THIS ORDER IS TO BE MAILED
BY MAIL TO ALL CO. COUNSEL AND
PROSECUTORS IMMEDIATELY
UPON RECEIPT.

Marie King, Tenant, appears not, and should be dismissed from this action; and the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Larry M. Glidewell a/k/a Larry Mac Glidewell, Deceased; Tammy Glidewell a/k/a Tammy J. Glidewell a/k/a Tammy J. Putnam; Carl Glidewell a/k/a Carl M. Glidewell a/k/a Carl Mack Glidewell, individually, and as Administrator of the Estate of Larry M. Glidewell a/k/a Larry Mac Glidewell, Deceased; Joshua Glidewell; Sherri Merriweather; Betty L. Glidewell; and Steve Glidewell, appear not, but make default.

The Court, being fully advised and having examined the court file, finds that the Defendant, Tammy Glidewell a/k/a Tammy J. Glidewell a/k/a Tammy J. Putnam, acknowledged receipt of Summons and Complaint on May 16, 1991; that Defendant, Carl M. Glidewell a/k/a Carl Glidewell a/k/a Carl Mack Glidewell, individually, and as Administrator of the estate of Larry M. Glidewell a/k/a Larry Mac Glidewell, Deceased, acknowledged receipt of Summons and Complaint on May 13, 1991; that Defendant, Joshua Glidewell, acknowledged receipt of Summons and Amended Complaint on September 12, 1991 through his guardian ad litem, Tammy Glidewell a/k/a Tammy J. Glidewell a/k/a Tammy J. Putnam; that Defendant, Sherri Merriweather, acknowledged receipt of Summons and Second Amended Complaint on June 12, 1992; that Defendant, Terri Kesler was served with Summons and Second Amended Complaint on August 6, 1992; that Defendant, Betty L. Glidewell, acknowledged receipt of Summons and Second Amended Complaint on July 22, 1992 and was served with Summons and Second

Amended Complaint on August 4, 1992; and that Defendant, Steve Glidewell, acknowledged receipt of Summons and Second Amended Complaint on July 3, 1992.

The Court further finds that Defendant, Susan Marie King, Tenant, has not been served herein, as the house is vacant and she should therefore be dismissed as a Defendant herein.

The Court further finds that the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Larry M. Glidewell a/k/a Larry Mac Glidewell, Deceased, were served by publishing notice of this action in the Miami News-Record, a newspaper of general circulation in Ottawa County, Oklahoma, once a week for six (6) consecutive weeks beginning November 20, 1992, and continuing to December 25, 1992, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Larry M. Glidewell a/k/a Larry Mac Glidewell, Deceased, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses of the

Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Larry M. Glidewell a/k/a Larry Mac Glidewell, Deceased. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Farmers Home Administration, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendants served by publication.

It appears that the Defendants, County Treasurer, Ottawa County, Oklahoma, and Board of County Commissioners, Ottawa County, Oklahoma, filed their Answer on May 15, 1991, disclaiming any right, title or interest in the subject property; that the Defendant, Terri Kesler, filed her Answer on August 21, 1992; and that the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Larry M. Glidewell a/k/a Larry Mac Glidewell, Deceased; Tammy Glidewell a/k/a Tammy J. Glidewell a/k/a Tammy J. Putnam; Carl Glidewell a/k/a Carl M. Glidewell a/k/a Carl Mack Glidewell,

individually, and as Administrator of the Estate of Larry M. Glidewell a/k/a Larry Mac Glidewell, Deceased; Joshua Glidewell; Sherri Merriweather; Betty L. Glidewell; and Steve Glidewell have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon certain mortgage notes and for foreclosure of a mortgage securing said mortgage notes upon the following described real property located in Ottawa County, Oklahoma, within the Northern Judicial District of Oklahoma:

South Half (S 1/2) of the Northeast Quarter (NE 1/4), and South Half (S 1/2) of Northwest Quarter (NW 1/4), and Northeast Quarter (NE 1/4) of Southeast Quarter (SE 1/4), of Section Twenty-one (21), Township Twenty-nine (29) North, Range Twenty-four (24) East of the Indian Meridian, Ottawa County, Oklahoma.

The Court further finds that this is a suit brought for the further purpose of judicially determining the death of the Defendant, Larry M. Glidewell a/k/a Larry Mac Glidewell and of judicially determining the heirs of Larry M. Glidewell a/k/a Larry Mac Glidewell.

The Court further finds that Larry M. Glidewell a/k/a Larry Mac Glidewell, now deceased, became the record owner of the real property involved in this action by virtue of a General Warranty Deed Dated April 18, 1979 from M. Eva Lee, which was filed in the records of the County Clerk of Ottawa County, Oklahoma, on July 11, 1979, in Book 391, Page 100.

The Court further finds that Larry Mack Glidewell died on May 27, 1989, while seized and possessed of the real property

being foreclosed. The Certificate of Death was issued by the Oklahoma State Department of Health, certifying Larry Mack Glidewell's death.

The Court further finds that the Defendants, Larry M. Glidewell, Carl M. Glidewell and Tammy J. Glidewell, executed and delivered to the United States of America, acting through the Farmers Home Administration, the following Promissory Notes and Reamortization and/or Deferral Agreements:

<u>Debtors</u>	<u>Document</u>	<u>Date</u>
L. Glidewell	Prom. Note	12-04-79
L. Glidewell	Reamort.	12-18-84
L. Glidewell	Reamort.	12-09-86
L. Glidewell	Prom. Note	06-11-80
L. Glidewell	Reamort.	12-18-84
L. Glidewell	Reamort.	12-09-86
L. Glidewell	Prom. Note	05-26-78
L. Glidewell C. Glidewell	Prom. Note	12-05-78
L. Glidewell C. Glidewell	Prom. Note	05-28-80
L. Glidewell	Prom. Note	12-18-84
L. Glidewell	Prom. Note	12-09-86
L. Glidewell T. Glidewell	Prom. Note	05-21-81
L. Glidewell	Prom. Note	12-18-84
L. Glidewell	Prom. Note	12-09-86
L. Glidewell T. Glidewell	Prom. Note	05-21-81
L. Glidewell	Prom. Note	12-18-84

<u>Debtors</u>	<u>Document</u>	<u>Date</u>
L. Glidewell	Prom. Note	12-09-86
L. Glidewell T. Glidewell	Prom. Note	05-21-81
L. Glidewell	Prom. Note	12-18-84
L. Glidewell	Prom. Note	12-09-86

The Court further finds that as security for the payment of the above-described notes and agreements, the Defendants, Larry M. Glidewell and Tammy J. Glidewell, executed and delivered to the United States of America, acting through the Farmers Home Administration, the following real estate mortgages covering the above-described property, situated in the State of Oklahoma, Ottawa County:

<u>Debtors</u>	<u>Document</u>	<u>Date</u>	<u>Recorded</u>	<u>Book</u>	<u>Page</u>	<u>County</u>
L. Glidewell	Mortgage	12-04-79	12-04-79	395	337	Ottawa
L. Glidewell	Mortgage	06-11-80	06-11-80	399	388	Ottawa
L. Glidewell T. Glidewell	Mortgage	05-21-81	05-21-81 06-01-81	407 407	345 607	Ottawa Ottawa

The Court further finds that, as collateral security for the payment of the above-described notes, the Defendants, Larry Glidewell a/k/a Larry M. Glidewell and Tammy J. Glidewell, executed and delivered to the United States of America, acting through the Farmers Home Administration, the following financing statements and security agreements thereby creating in favor of Farmers Home Administration a security interest in certain crops, livestock, farm equipment and the above-described real property described therein:

<u>Debtors</u>	<u>Document</u>	<u>Date</u>	<u>Filed</u>	<u>File#</u>	<u>County</u>
L. Glidewell	Fin. Stmt.	12-06-78	12-06-78	367279	Okla.
L. Glidewell T. Glidewell	Cont. Stmt.	08-01-83	08-01-83	68079	Okla.
L. Glidewell T. Glidewell	Cont. Stmt.	07-15-88	07-15-88	41085	Okla.
L. Glidewell T. Glidewell	Fin. Stmt.	05-22-81	05-22-81	1178	Ottawa
L. Glidewell T. Glidewell	Cont. Stmt.	05-20-86	05-20-86	0759	Ottawa
L. Glidewell	Fin. Stmt.	12-05-78	12-05-78	10046	Ottawa
L. Glidewell T. Glidewell	Cont. Stmt.	08-01-83	08-01-83	2143	Ottawa
L. Glidewell T. Glidewell	Cont. Stmt.	07-12-88	07-12-88	0834	Ottawa
L. Glidewell	Sec. Agree.	06-28-79			
L. Glidewell	Sec. Agree.	06-11-80			
L. Glidewell	Sec. Agree.	08-04-80			
L. Glidewell T. Glidewell	Sec. Agree.	05-22-81			
L. Glidewell T. Glidewell	Sec. Agree.	06-15-81			
L. Glidewell	Sec. Agree.	07-27-83			
L. Glidewell	Sec. Agree.	11-29-84			
L. Glidewell	Sec. Agree.	12-23-85			
L. Glidewell	Sec. Agree.	12-03-86			
L. Glidewell	Sec. Agree.	12-09-87			
L. Glidewell	Fin. Stmt.	12-09-88	12-09-88	886539	Ottawa

The Court further finds that the Defendants, Larry M. Glidewell a/k/a Larry Mac Glidewell, Tammy Glidewell a/k/a Tammy J. Glidewell a/k/a Tammy J. Putnam, and Carl Glidewell a/k/a Carl

M. Glidewell a/k/a Carl Mack Glidewell, individually, and as Administrator of the estate of Larry M. Glidewell a/k/a Larry Mac Glidewell, Deceased, made default under the terms of the aforesaid promissory notes, mortgages, financing statements and security agreements, by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, the Estate of Larry M. Glidewell a/k/a Larry Mac Glidewell, is indebted to the Plaintiff in the principal amount of \$231,631.75, plus accrued interest in the amount of \$31,942.24 as of July 9, 1990, plus interest accruing thereafter at the rate of \$24.7313 per day until judgment, plus interest thereafter at the legal rate until fully paid; the Defendant, Tammy Glidewell a/k/a Tammy J. Glidewell a/k/a Tammy J. Putnam, is indebted to the Plaintiff in the principal amount of \$21,756.12, plus interest in the amount of \$7,304.88 as of July 9, 1990, plus interest at the rate of 13.9024 per day until judgment, plus interest thereafter at the legal rate until fully paid; and the Defendant, Carl Glidewell a/k/a Carl M. Glidewell a/k/a Carl Mack Glidewell, individually, and as Administrator of the estate of Larry M. Glidewell a/k/a Larry Mac Glidewell, is indebted to the Plaintiff in the principal amount of \$28,502.97, plus accrued interest in the amount of \$3,954.64 as of July 9, 1990 plus interest accruing at a rate of 2.8788 per day until judgment and at the legal judgment rate thereafter until paid, and the costs of this action in the amount of \$315.35 (\$57.40 fees for service of Summons and

Complaint, \$247.95 publication fees, \$10.00 fee for recording Notice of Lis Pendens).

The Court further finds that the Plaintiff is entitled to a judicial determination of death of Larry M. Glidewell a/k/a Larry Mac Glidewell and to a judicial determination of the heirs of Larry M. Glidewell a/k/a Larry Mac Glidewell.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Ottawa County, Oklahoma, claim no right, title or interest in the subject real property.

The Court further finds that the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Larry M. Glidewell a/k/a Larry Mac Glidewell, Deceased; Tammy Glidewell a/k/a Tammy J. Glidewell a/k/a Tammy J. Putnam; Carl Glidewell a/k/a Carl M. Glidewell a/k/a Carl Mack Glidewell, individually, and as Administrator of the Estate of Larry M. Glidewell a/k/a Larry Mac Glidewell, Deceased; Joshua Glidewell; Sherri Merriweather; Betty L. Glidewell; and Steve Glidewell, are in default and have no right, title or interest in the subject property of this action.

The Court further finds that the Defendant, Terri Kesler, may or may not have some right, title or interest to the property which is the subject matter of this action by virtue of being an heir to Larry M. Glidewell a/k/a Larry Mac Glidewell, Deceased. Said claim is inferior to the interest of the Plaintiff, United States of America.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, the Estate of Larry M. Glidewell a/k/a Larry Mac Glidewell, in the principal amount of \$231,631.75, plus accrued interest in the amount of \$31,942.24 as of July 9, 1990, plus interest accruing thereafter at the rate of \$24.7313 per day until judgment, plus interest thereafter at the current legal rate of 3.21 percent per annum until paid, plus the costs of this action in the amount of \$315.35 (\$57.40 fees for service of Summons and Complaint, \$247.95 publication fees, \$10.00 fee for recording Notice of Lis Pendens), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Tammy Glidewell a/k/a Tammy J. Glidewell a/k/a Tammy J. Putnam, in the amount of \$21,756.12 principal, plus interest in the amount of \$7,304.88 as of July 9, 1990, plus interest at the rate of 13.9024 per day until judgment, plus interest thereafter at the current legal rate of 3.21 percent per annum until paid.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Carl M. Glidewell a/k/a Carl Glidewell a/k/a Carl Mack Glidewell, individually, and as Administrator of the estate of Larry M. Glidewell a/k/a Larry Mac Glidewell, Deceased, in the amount of \$28,502.97 principal, plus accrued interest in the amount of

\$3,954.64 as of July 9, 1990 plus interest accruing at a rate of 2.8788 per day until judgment, plus interest thereafter at the current legal rate of 3.21 percent per annum until paid.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the death of Larry Mack Glidewell be and the same hereby is judicially determined to have occurred on May 27, 1989 in the City of Bernice, Oklahoma, Delaware County, Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the only known heirs of Larry M. Glidewell a/k/a Larry Mac Glidewell, Deceased, are Tammy Glidewell a/k/a Tammy J. Glidewell a/k/a Tammy J. Putnam; Carl M. Glidewell a/k/a Carl Glidewell a/k/a Carl Mack Glidewell, individually, and as Administrator of the estate of Larry M. Glidewell a/k/a Larry Mac Glidewell, Deceased; Joshua Glidewell; Sherri Merriweather; Terri Kesler; Betty L. Glidewell; and Steve Glidewell, and that despite the exercise of due diligence by Plaintiff and its counsel, no other known heirs of Larry M. Glidewell a/k/a Larry Mac Glidewell, Deceased, have been discovered and it is hereby judicially determined that Tammy Glidewell a/k/a Tammy J. Glidewell a/k/a Tammy J. Putnam; Carl M. Glidewell a/k/a Carl Glidewell a/k/a Carl Mack Glidewell, individually, and as Administrator of the estate of Larry M. Glidewell a/k/a Larry Mac Glidewell, Deceased; Joshua Glidewell; Sherri Merriweather; Terri Kesler; Betty L. Glidewell; and Steve Glidewell are the only known heirs of Larry M. Glidewell a/k/a Larry Mac Glidewell, Deceased, and that Larry M. Glidewell a/k/a Larry Mac Glidewell, Deceased, has no other known heirs, executors, administrators, devisees, trustees, successors and

assigns; and the Court approves the Certificate of Publication and Mailing regarding said heirs.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Larry M. Glidewell a/k/a Larry Mac Glidewell, Deceased; Tammy Glidewell a/k/a Tammy J. Glidewell a/k/a Tammy J. Putnam; Carl Glidewell a/k/a Carl M. Glidewell a/k/a Carl Mack Glidewell, individually, and as Administrator of the estate of Larry M. Glidewell a/k/a Larry Mac Glidewell, Deceased; Joshua Glidewell; Sherri Merriweather; Betty L. Glidewell; Steve Glidewell; and County Treasurer and Board of County Commissioners, Ottawa County, Oklahoma, have no right, title, or interest in the subject property, and the Defendant, Susan Marie King, Tenant, is hereby dismissed as a Defendant herein.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, the Estate of Larry M. Glidewell a/k/a Larry Mac Glidewell, Tammy Glidewell a/k/a Tammy J. Glidewell a/k/a Tammy J. Putnam, and Carl Glidewell a/k/a Carl M. Glidewell a/k/a Carl Mack Glidewell, individually, and as Administrator of the estate of Larry M. Glidewell a/k/a Larry Mac Glidewell, Deceased, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell, according to Plaintiff's election with or without appraisal, the property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

Third:

In payment to the Defendant, Terri Kesler, according to her pro rata interest in any surplusage from the sale.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.


IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject property or any part thereof.


(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney


PHIL PINNELL, OBA #7169
Assistant United States Attorney
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463


GARY L. BLUME
Attorney for Defendant, Terri Kesler

Judgment of Foreclosure
Civil Action No. 91-C-312-C

PP/esr

DATE **MAR 22 1993**

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

KEVIN MARTIN; TRACIE MARTIN;
COUNTY TREASURER, Tulsa County,
Oklahoma; and BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

FILED

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION NO. 92-C-641-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 19 day
of March, 1993. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Peter Bernhardt, Assistant United States
Attorney; the Defendants, County Treasurer, Tulsa County,
Oklahoma, and Board of County Commissioners, Tulsa County,
Oklahoma, appear by J. Dennis Semler, Assistant District
Attorney, Tulsa County, Oklahoma; and the Defendants, Kevin
Martin and Tracie Martin, appear not, but make default.

The Court being fully advised and having examined the
court file finds that the Defendant, County Treasurer, Tulsa
County, Oklahoma, acknowledged receipt of Summons and Complaint
on July 27, 1992; and that the Defendant, Board of County
Commissioners, Tulsa County, Oklahoma, acknowledged receipt of
Summons and Complaint on July 27, 1992.

The Court further finds that the Defendants, Kevin
Martin and Tracie Martin, were served by publishing notice of

NOTICE

UPON RECEIPT. IMMEDIATELY

this action in the Tulsa Daily Commerce & Legal News, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning October 8, 1992, and continuing through November 12, 1992, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, Kevin Martin and Tracie Martin, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses of the Defendants, Kevin Martin and Tracie Martin. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly

approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendants served by publication.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on August 17, 1992; that the Defendants, Kevin Martin and Tracie Martin, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

LOT TWELVE (12), BLOCK NINE (9), KENDALWOOD III, AN ADDITION IN THE CITY OF GLENPOOL, TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE RECORDED AMENDED PLAT THEREOF.

The Court further finds that on March 20, 1991, the Defendants, Kevin Martin and Tracie Martin, executed and delivered to the United States of America, acting on behalf of the Secretary of Veterans Affairs, their mortgage note in the amount of \$54,550.00, payable in monthly installments, with interest thereon at the rate of 7.5 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Kevin Martin and Tracie Martin, executed and delivered to the United States of

America, acting on behalf of the Secretary of Veterans Affairs, a mortgage dated March 20, 1991, covering the above-described property. Said mortgage was recorded on March 22, 1991, in Book 5310, Page 1449, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Kevin Martin and Tracie Martin, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Kevin Martin and Tracie Martin, are indebted to the Plaintiff in the principal sum of \$54,468.78, plus interest at the rate of 7.5 percent per annum from July 1, 1991 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$238.15 for publication fees.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, claim no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against Defendants, Kevin Martin and Tracie Martin, in the principal sum of \$54,468.78, plus interest at the rate of 7.5 percent per annum from July 1, 1991 until judgment, plus interest thereafter at the current legal rate of 3.21 percent per annum until paid, plus the costs of this action in the amount of \$238.15 for publication fees, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes,

insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Kevin Martin and Tracie Martin, to satisfy the in rem judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants


and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ JAMES O. ELLISON


UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney



PETER BERNHARDT, OBA #741
Assistant United States Attorney
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463



J. DENNIS SEMLER, OBA #8076
Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, Oklahoma 74103
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 92-C-641-E

PB/css

ENTERED ON DOCKET
DATE MAR 22 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MICHAEL DALE ADAMS,
Plaintiff,

vs.

DEPARTMENT OF HEALTH AND
HUMAN SERVICES,

Defendant.

No. 91-C-453-E

FILED

MAR 22 1993

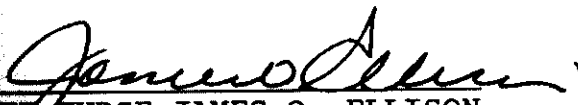
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

The Court has for consideration the Report and Recommendation of the Magistrate filed the 25th day of August, 1992 (docket #11). After careful consideration of the record and the issues, including the briefs filed herein by the parties, the Court has concluded that the Report and Recommendations of the Magistrate should be and hereby are affirmed and adopted by the Court.

IT IS THEREFORE ORDERED that the Secretary's determination that the claimant, Michael Dale Adams, is not disabled is hereby affirmed.

ORDERED this 22^d day of March, 1993.


CHIEF JUDGE JAMES O. ELLISON
UNITED STATES DISTRICT COURT

DATE MAR 22 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 19 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FEDERAL DEPOSIT INSURANCE
CORPORATION, as Receiver for Victor Federal
Savings and Loan Association, Muskogee, Oklahoma,

Plaintiff,

vs.

Case No. 91-C-571-B

LAWRENCE A. HUBERT, a single person, et al.,

Defendants.

DEFICIENCY JUDGMENT

NOW on this 18 day of March, 1993, there came on for hearing the Motion of FEDERAL DEPOSIT INSURANCE CORPORATION ("FDIC"), Plaintiff herein, for Leave To Enter Deficiency Judgment herein, filed on the 13 day of January, 1993, a true and correct copy of said Motion together with a copy of the Order for Hearing entered herein, having been duly served upon the Defendants, LAWRENCE A. HUBERT; LINDA L. GROTHEER (formerly LINDA L. HUBERT); JIMMY L. REAGAN and MILDRED S. REAGAN, as provided in said Order and as shown by the return filed herein. The Plaintiff appeared by and through its attorney, Richard H. Ruth, and the Defendants appeared not either in person or through an attorney.

The Court thereupon considering said Motion and the evidence produced in open Court finds that the fair and reasonable market value of the subject property does not exceed \$75,000.00; that the amount of the highest and best bid at the Sheriff's Sale herein and the price for which the subject property was sold at said Sale was \$53,901.00, and that Plaintiff is entitled to a deficiency judgment of TEN THOUSAND NINETY-FIVE


DOLLARS AND SIXTY-NINE CENTS (\$10,095.69), said amount being the lesser sum of the difference between the amount of Plaintiff's judgment and the sale price of the subject property at Sheriff's Sale and the difference between the amount of the Plaintiff's judgment and the market value of the property, all as provided by law.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the FDIC have and recover a deficiency judgment against the Defendants, LAWRENCE A. HUBERT; LINDA L. GROTHEER (formerly LINDA L. HUBERT); JIMMY L. REAGAN and MILDRED S. REAGAN, in the sum of TEN THOUSAND NINETY-FIVE DOLLARS AND SIXTY-NINE CENTS (\$10,095.69).

S/ THOMAS R. BRETT

JUDGE OF THE U. S. DISTRICT COURT

APPROVED:



RICHARD H. RUTH, OBA #7850
Post Office Box 26208
Oklahoma City, Oklahoma 73126
(405) 841-4319
Attorney for FDIC

[Defic.jud]